

Planning Board Minutes 07/09/13

NEWMARKET PLANNING BOARD MEETING JULY 9, 2013 MINUTES

Present: Eric Botterman (Chairman), Diane Hardy (Town Planner), Rick McMenimen (Vice Chairman), Janice Rosa, Val Shelton, Dan Wright (Town Council ex officio), Jane Ford (Alternate), Gabriel Jerome (Alternate), Elizabeth Dudley

Absent: John Brackett (excused)

Called to order: 7:04 p.m.

Adjourned: 8:49 p.m.

Agenda Item #1 – Pledge of Allegiance

Agenda Item #2 – Public Comments

None.

Agenda Item #3 – Review & approval of minutes: June 11, 2013

Action

Motion: Rick McMenimen made a motion to approve the June 11, 2013 Planning Board minutes necessary

Second: Janice Rosa

Chairman Botterman appointed Jane Ford to take the place of John Brackett on the Board.

Elizabeth Dudley wanted to clarify a statement she made and changed her statement on page 7 to “Elizabeth Dudley asked about the houses near the road. She wanted the architect to consider how the houses will look from the road.” Diane Hardy clarified, for information purposes, that the Planning Board does not get involved in the architectural design of houses.

Elizabeth Dudley also wanted to change, on page 9, “pedestrian walkway” to “pedestrian overpass”.

Vote: All in favor

Agenda Item #4 – Regular Business

Newmarket Mills, LLC – Continuance of a public hearing for an application for Major Site Plan, at Main Street, Tax Map U2, Lots 60A and 61, B1 Zone (a proposed zoning amendment to change the zoning from B1 to M2 is under consideration by the Town Council at the time of this notice). The proposal is to construct a single story, 9,600 sq. ft. commercial building near Spring St at the west end of the Newmarket Mills parking lot. The structure will house various

businesses, including a small grocery, restaurant, and retail shops.

Matt Assia, Chinburg Builders, Inc., showed plans that reflected comments from the last meeting and the Technical Review Committee (TRC) meeting. They have also submitted a landscaping plan. They changed the site plan back to its original configuration. The parking adjacent to the library will remain the same as it is today. An island will be installed at the end of the library parking area to direct traffic and for safety. It will also direct stormwater.

He showed a site plan of the back of the site along Spring Street. He indicated a larger snow storage area at the corner.

Val Shelton asked about a notation on Plan C3, Note 3-7. She asked if they were putting a retaining wall in the indicated area next to the building on the Polish Club's side. Mr. Assia stated they are only cutting into part of the existing rip rap. Until they start digging, they do not know what is under it. It could be ledge. They will secure it, so it is stable, either with rip rap or a retaining wall. Chairman Botterman stated the Town Engineer will look at that during the construction phase.

Val Shelton asked about the fence. Mr. Assia stated the attractive side is on the abutter's property. Diane Hardy asked if they could get some additional details on the fence. Mr. Assia stated he would do that.

Eric Botterman opened the public hearing.

Joan DeYoreo, Library Trustee, stated the plans look good. She asked if a speed bump or something to slow traffic down could be added coming in off of Route 108. Chairman Botterman asked Eric Chinburg if he would have Altus Engineering look at that and see if there is a place to put some sort of traffic calming measure for speed reduction. It cannot be too close to where the cars come off of Route 108. Joan DeYoreo stated it could be just past the crosswalk area. Chairman Botterman stated they would have the applicant look into it and see if there is a reasonable place to put something in to slow down traffic.

Dan Wright asked what the total number of surplus parking spaces would be. Mr. Assia stated there are 22 surplus spaces.

Martin McKinsey, 6 Washington Street, stated according to the new M-2 zoning plans for this area, this was not in compliance with the requirements of the building facing the street it borders on and suggested that it not be set back too far from the street, which keeps parking from intervening between the neighborhood and the building. He understood the need for trucks to come in to the site. He stated the position of the building emphasized the fact that the building was turning its back on the neighborhood. This was part of the proposed historic district and that should make everyone think of how well this harmonizes with the neighborhood. He asked how the developers see this as harmonizing with the neighborhood. He asked what material the building will be made with. He asked if there would be clapboards or some other material or brick. He stated, in what he saw of the design, it does not seem to have any connection to its surroundings. The site is not pedestrian friendly. This building is an island surrounded by parking, entrances and exits. He asked how many businesses would be in there. He stated, when he looked at this, it made him think of a strip mall. The corner of Spring Street is the bus stop for the school. Every morning and afternoon there are children there.

Mr. Assia showed a rendering of the back of the building. Eric Chinburg stated they had comments from neighbors earlier on and they have worked to add architectural details to the rear of the building. Most commercial buildings are just concrete block on the back with loading docks. They have removed the loading docks and moved the dumpsters away from the building. They added awnings. They added a crosswalk and an entrance into the building from the Spring Street side. They have made a good effort to make it more welcoming to the Spring Street area neighbors.

Mr. McKinsey asked how that one door would serve multiple businesses. Mr. Chinburg stated the concept was that approximately 2/3 of the building would be a small grocery. The other side would be two or three smaller businesses. They put the rear entrance door off center, so that it could go into a little hallway or lobby and possibly access some or all of the businesses. That configuration cannot be determined yet, but that is the hope. Chairman Botterman said he was happy with this and it is a huge improvement over what they started with. They have added a lot of detailing and shrubbery along the back and have done everything the Board has asked them to do.

Elizabeth Dudley asked if another crosswalk could be put in for the people in buildings directly across the street. Chairman Botterman stated you cannot put a cross walk in where there is no sidewalk.

Dan Wright clarified that the proposed rezoning of this area currently before the Town Council has not been voted on yet. Mr. Chinburg stated they have shifted the building, so it does meet the current zoning. If that zoning changes and they have not developed the site, they may seek an amendment to the site plan.

Mr. Chinburg stated, in answer to an earlier question, on the exterior of the building there would be some type of masonry down low and up higher would be a metal treatment or some type of composite material. On the other sides, there is a lot of glass, with the peaked roofs being metal. Val Shelton clarified it would not be concrete blocks. Mr. Chinburg stated the masonry could be a type of concrete block depicted as brick. It would be textured similar to the retaining walls they have done. Martin McKinsey stated, if the top portion of the rear of the building was metal, it would look like a garage. He was still concerned the building would not look like part of the neighborhood and asked if they could put glass on the back of the building, too. Chairman Botterman asked how the glass would make the building seem more part of the neighborhood. There are no glass buildings there now. Mr. McKinsey stated it would not look like the back of the building, if it had glass. He was also concerned that the rear entrance door may not go in. Mr. Chinburg stated there will be a door there that would go to at least one business. He did not know at this point if it will be able to access the other businesses.

Sonke Dornblut, 351 Wadleigh Falls Road, asked what the signage would be for the property. Mr. Assia indicated on a plan where the signage would go.

There were no further questions.

Chairman Botterman closed the public hearing.

Action

Motion: Val Shelton made a motion regarding Newmarket Mills, LLC, application for major site plan at Main Street, Tax Map U2, Lots 60A and 61, B1 Zone to waive the requirements of Section 4.10(B) Soils Map and checklist

Second: Rick McMenimen

Vote: All in favor

Action

Motion: Val Shelton made a motion to waive Section 3.02(A) in parking for number of spaces

Second: Rick McMenimen

Val Shelton stated, in the parking analysis summary, they have an existing excess surplus of 64 spaces, including the public parking in front of the mills. With the additional supply, that brings the total to 285, which leaves 22 spaces. Even if the applicant was not utilizing the 12 public spaces, they would still have an excess of 10 spaces on site. She asked why they had to look at this waiver. Diane Hardy stated, when this started, the Board had made a determination that they wanted to review the application under both the B1 and M2 zones. B1 zoning parking is determined a little bit differently and it is based on prescribed standards. Val Shelton stated based on B1 zoning they were at a lesser number than 10 excess spaces. Diane Hardy stated the difference between the B1 and M2 zoning is that it recognizes the opportunity for shared parking. In the Demand Analysis, there is a 20% reduction, which was documented as part of Steve Pernaw's memo. He is the Traffic Engineer. Val Shelton stated they would not need to waive this. If they were not doing the reduction and the Board elected not to include the Main Street public parking, it would be a net zero. Diane Hardy stated they are trying to cover all bases, because the Board does not know what the outcome of the rezoning will be.

Vote: All in favor

Action

Motion: Val Shelton made a motion to waive Section 3.02(B)(1)(a)(2) Stall Size relative to waiving the required size to accommodate 20' aisles for ADA van spaces.

Second: Rick McMenimen

Chairman Botterman clarified that waiver is reducing the depth of the space from 20' to 18'.

Vote: All in favor

Action

Motion: Val Shelton made a motion to waive Section 3.02(B)(4) requiring that the curbing in the B1 Zone be concrete and to be able to allow the applicant to match the existing style and design of the curbing that is currently on site, with the use of vertical granite at the driveway entrances and the Cape Cod berms at the interior islands

Second: Rick McMenimen

Vote: All in favor

Action

Motion: Val Shelton made a motion to waive Section 3.02 Site Plan Review Regulations regarding parking locations to grant the applicant the ability to park within the setback along the southerly property line, which will allow for more sufficient utilization of existing space based upon the grade of the lot and the existing visual buffer along Spring Street will provide a visual buffer to employee parking

Second: Rick McMenimen

Vote: All in favor

Diane Hardy stated there was one more waiver regarding onsite parking relating to the rezoning proposal. This would

apply if the M2 zoning is approved by the Town Council. No onsite parking shall be allowed between the front of the primary structure and the street. This relates to five parking spaces along Spring Street. Mr. Assia pointed out the area on the plan. The applicant is trying to cover all bases, if the back of the building was changed to become the front of the building.

Action

Motion: Val Shelton made a motion to waive Section 3.22(C)(5) Onsite Parking relative to not allowing parking between the primary structure and the street

Second: Rick McMenimen

Vote: All in favor

Chairman Botterman stated the second page of Diane Hardy's memo contains a list of recommendations.

Janice Rosa stated there is a lot of foot traffic on Spring Street and Elm Street. She asked what could be done to slow traffic down. She stated a lot of people walk in that area and the school buses stop there. Chairman Botterman stated the Board can pass this concern on to the Town Administrator for the Highway Safety Committee to look at. That is an existing problem. Val Shelton asked what the Town Engineer and TRC's stance was on the traffic there. Diane Hardy stated the Board does have a traffic report for this site. That was all reviewed by the TRC. Chairman Botterman stated everything being discussed may be valid, but it is not this developer's responsibility to correct an existing problem. The fact that there are more cars that will be going in there does not necessarily make it unsafe. It just means there are more cars. It is an existing situation. Val Shelton asked if the TRC had looked at that. Chairman Botterman stated the Police Chief and Fire Chief/DPW Director were both at the meeting, along with the Town Administrator and Underwood Engineering. No one ever made any statements that this level of traffic was going to make crossing the street unsafe. Janice Rosa stated that area is going to be impacted by this site. She is not against the developer and intends to approve the plan. She felt it was the developer's responsibility to mitigate this. She did not think they should look at this after the fact. Chairman Botterman felt this was a Town problem. He did not know if anything more could be done. There are crosswalks out there now. Elizabeth Dudley stated there could be more markings. Chairman Botterman stated he did not disagree. He stated it was an existing condition that the Town should address. Val Shelton stated her point was that if the applicant would have submitted a traffic study, it would have shown the increase within these intersections. She asked what the TRC's position on it was. Diane Hardy stated there is a report prepared by Steve Pernaw, the Traffic Engineer. The Planning Board did not require a full traffic analysis at the very first meeting. The engineer figured out the split in the traffic, she thought it was a 25/75% split and there were traffic volumes calculated. It was not significant enough to warrant any kind of a signalized intersection or major offsite improvements. Val Shelton stated the TRC and Town Engineer reviewed the traffic memo and, in their opinion, any additional increase in that entrance location did not require further mitigation with crosswalks, etc. Diane Hardy stated the entrance onto Route 108 is subject to a Highway Access Permit from NHDOT. That is one of the suggested conditions of approval. Diane Hardy stated the TRC did consider this and worked in good faith with the applicant all the way through the process. Chairman Botterman stated, when a traffic study is done, there is never a pedestrian component. They look at vehicles, they do not look at pedestrians walking and crossing. They look at the number of cars and where they are coming from and going to. Val Shelton stated they look at the increase in traffic the proposed use will have.

Action

Motion: Val Shelton made a motion that the Board approve the application for Major Site Plan submitted by Newmarket Mills, LLC, for property located at Main Street, Tax Map U2, Lots 60A and 61, B1 Zone (a proposed zoning amendment to change the zoning from B1 to M2 is under consideration by the Town Council at the time of this notice). The proposal is to construct a single story, 9,600 sq. ft. commercial building near Spring St at the west end of the Newmarket Mills parking lot. The structure will house various businesses, including a small grocery, restaurant, and retail shops, with the following conditions:

1. Subject to the approval of the Town Council and proper execution and recording within the Rockingham County Registry of Deeds, of a Permanent Right-of-Way Easement Agreement, which is entered into by and between the Town of Newmarket and the Newmarket Mills, LLC, which grants to the Newmarket Mills, LLC the rights of access and egress

across the Tax Map U2, Parcel 60B, which is owned by the Town of Newmarket.

2. Subject to approval of the proposed parking and access improvements, as shown on Site Plan C-2A, on Tax Map U Parcel 60B by the Town of Newmarket.

3. Impact Fees for the project calculated in accordance with Town regulations shall be paid to the Town of Newmarket prior to the issuance of any Certificate of Occupancy related to this project.

4. The applicant shall enter into a developer's agreement with the Town of Newmarket, which includes all Findings of Facts, special site plan approval conditions, the Town's expectations relative to the development prior to and during construction, requirements prior to the issuance of building permits, certificates of occupancy and scheduling.

5. The applicant provides evidence that all relevant State permits from NH Department of Transportation have been secured. Copies of all permits and any corresponding conditions shall be provided to the Town Planning Department prior to the signing of the site plans by the Planning Board Chair.

6. The revised Site Plan (Plans C-2 and C-2A) dated July 1, 2013 shall be recorded at the Rockingham County Registry of Deeds, as amended by these conditions.

7. Final sign-off of the revised plans, dated July 1, 2013, by Rick Malasky, Public Works Director and Fire Chief; Underwood Engineers; and Sean Grieg, Water and Wastewater Superintendent.

8. The title block on Plan C-2 A to be modified to reveal the project notes, which are obscured regarding existing parking.

9. The applicant work with the Public Works Department to improve upon the location, design and visibility of signage on Main Street to better direct downtown patrons to the Municipal Parking, which is currently located to the rear of the Newmarket Library.

10. The applicant record the required lot merger between the designated lots, as shown on the plan.

11. The applicant review and consider the landscaping recommendations submitted by Elizabeth Dudley on July 9, 2013.

Second: Rick McMenimen

Val Shelton stated she would like to discuss the recording of the site plan. She received a memo from Bill Doucet, Doucet Survey, regarding issues and problems that occur when recording site plans at the Registry of Deeds. They need to leave the condition in place, because it is part of our site plan requirements, but she would like to discuss the problems with recording site plans at a future meeting. A lot of towns are taking this requirement out of their regulations, because their plans are being rejected by the Registry and, when it is a condition of approval, it is a problem.

Action

Motion: Janice Rosa made a motion to amend the motion to Item #11 of the landscape recommendations with the respect to the crabapple trees that the note should be added to the plan that any transplanted plants that don't survive within a two year period be replaced with comparable sized plants

Second: Rick McMenimen

Vote: All in favor

Chairman Botterman stated, on Condition #7 of the approval, he did not think all of those people should have to sign off on this. They have been part of the TRC. Diane Hardy stated Underwood Engineers did provide the Board with a letter stating that all of their comments had been addressed by the applicant and they were satisfied with the revised plans. She stated Sean Greig was in agreement with the water and sewer capacity figures that were provided and he signed off on those. Chairman Botterman stated that he did not like this, because if someone decided they didn't want to sign, the applicant is held up.

Action

Motion: Chairman Botterman made a motion to eliminate recommendation #7

Second: Rick McMenimen

Vote: All in favor

Chairman Botterman asked Val Shelton a question regarding Condition #3. He asked if the Board does not specifically ask about impact fees, does the Town then not have the authority to enforce them. Val Shelton stated the Planning Board waives and assesses impact fees at the time of plan approval.

Chairman Botterman stated regarding Conditions #1 and #2, the access off of Main Street is Town property. The Planning Board has no authority to approve things on Town property. It is stating the obvious and he would like to not have to state the obvious in decisions. He felt they could eliminate #1 and #2. Val Shelton stated, if these were eliminated, the Board would be approving a plan without having verification that the applicant has these easements and access. As a Planning Board, they have an obligation to ensure there is adequate access and egress to a site plan they are approving. She stated the applicant has not given the Board any recorded easement deed showing they have access. Eric Chinburg stated the developer's agreement from the Newmarket Mills project that was signed and recorded in June 2010 required, as a condition of approval for the mills, that they demonstrate to the Town's satisfaction that they have an easement across the property. It specifically read almost like this current condition reads. They did the easement plan, which was recorded and then the Mylar was recorded. All of the people who live across the street in the mills park there. It has already been established. There is an easement plan recorded. To have it be something where they have to go to a whole other deliberative body to get permission to use property that they already have permission to use is troublesome to him. Diane Hardy stated the Town's legal counsel would require that it be signed off by Town Council. Mr. Chinburg stated someone on the Town Council could say they weren't here when that was voted on, they don't like it, and they going to deny access. If they do not have access to it, they have a serious problem with the 112 apartments using it every day. Val Shelton stated they have approved this on a prior plan and asked why they are questioning access, at this point. Mr. Chinburg asked that the Board soften the language to state they would work with the Town's attorney and record a clarified document with better metes and bounds information. They already have the access. Like many older easements, the language is vague. They want to clean these up to make them clearer. Chairman Botterman stated there is no legal requirement for metes and bounds descriptions on an easement. In this case, it would be good to have that, because it will tie down forever where that easement is. Diane Hardy stated the process has to happen and Mr. Chinburg is working with the Town Administrator on this and he intends to go to the Town Council to get this clarified. It is really not necessary for this Board to get involved with it other than to assure that the access rights are there. There is not a question of whether the access rights are there, it just needs to be packaged in the right way. That is what this easement document would do. Chairman Botterman suggested they could make a condition that the site plan would be able to be recorded after receipt of that document. Val Shelton stated she would like to put some wording out there for the Board and make sure this is what they are trying to get across. She suggested the condition would be that the applicant records an easement at Rockingham County Registry of Deeds depicting the location of metes and bounds of the permanent right of way location over the Town owned land. Eric Chinburg stated, if this requires consent of the Town to grant that easement, it puts him in a really bad position. Mr. Chinburg stated they would work with the Town to record a document that clarifies the easement. Diane Hardy asked who maintains the easement. Mr. Chinburg stated they do that and it is in their interest to do so. Diane Hardy stated that is one of the things the Town's attorney would work out with the applicant. Val Shelton stated they are really looking for the applicant recording the necessary documentation at the Rockingham

County Registry of Deeds to clarify the existing easement location. Diane Hardy stated that could include the proposed parking that is part of this plan. Mr. Chinburg stated it was just an easement agreement, not a deed. It is just to discuss responsibilities, maintenance, the temporary access for and during construction and to clarify the metes and bounds.

Action

Motion: Val Shelton made a motion to amend her original motion, Item #1 and #2 that the applicant record an easement agreement at the Rockingham County Registry of Deeds with regards to the permanent right of way over the Town owned land and the proposed parking and access improvements as shown in site plan C2A on Tax Map U2 Parcel 60B

Second: Rick McMenimen

Vote: All in favor

Action

Motion: Janice Rosa made a motion under the recommendation on #9 the item of the applicant work with the Public Works Department to improve upon location design and physical signage on Main Street to better direct downtown patrons to the municipal parking lot to include the Building Inspector to that list

Second: Rick McMenimen

Vote: All in favor

Action

Motion: Val Shelton made a motion that the Board amend the motion as stated and amended thereto to also renumber all conditions of the approval

Second: Rick McMenimen

Vote: All in favor

Action

Vote on amended motion to approve: All in favor

Agenda Item #5 – New/Old Business

Update - Landscape Regulation

Diane Hardy stated that she, Elizabeth Dudley, and Cynthia Copeland met on June 27th and went through half of the

comments provided on the landscaping regulations. They will have one more meeting and then have something ready to present to the Board.

Planner's Report

Diane Hardy stated copies of memos regarding the rezoning and Bruce Mayberry's impact study are being provided to the Board for their information.

Committee Reports

Rick McMenimen stated he is the Trustee of the Trust Funds. The scholarships presented by this Town to the High School students were given out.

Diane Hardy stated they need to get the CIP process started. They will try to get that started within the next couple of weeks.

Chairman Botterman stated the Board needs to start discussing the next update of the Master Plan in time for the budget deadlines. Diane Hardy had given them a spreadsheet about it.

Agenda Item #6 - Adjourn

Action

Motion: Janice Rosa made a motion to adjourn at 8:49 p.m.

Second: Rick McMenimen

Vote: All in favor