

Planning Board Minutes 03/19/13

NEWMARKET PLANNING BOARD MEETING MARCH 19, 2013 MINUTES

Present: Val Shelton (Chairman), Janice Rosa (Vice Chairman), Rick McMenimen, Eric
John Brackett, Jane Ford (Alternate), Dan Wright (Town Council ex officio)

Botterman, Elizabeth Dud

Called to order: 7:02 p.m.

Adjourned: 9:42 p.m.

Agenda Item #1 – Pledge of Allegiance

Agenda Item #2 – Public Comments

None.

Agenda Item #4 – Regular Business (Chairman chose to put this item on at this time)

Walter W. Cheney - Public hearing for an application for Design Review for a subdivision requested by at Cushing Road, Tax Map R2, Lot 36-13, R1 Zone.

Chairman Shelton moved ahead on the agenda and asked the Board if they had a chance to review the March 15, 2013 memo from the Town's Attorney, Justin Richardson, pertaining to the application of Walter W. Cheney for the Design Review on a proposed subdivision of Tax Map R2, Lot 36-13. Attorney Justin Richardson has provided a legal opinion of why the Planning Board should not hear this application until the pending litigation is resolved. The Board had reviewed those documents. Chairman Shelton asked if the applicant had received a copy of the memo. Bill Doucet, Doucet Survey, stated that Mr. Cheney had received one. Chairman Shelton stated, based on the advice of counsel and the interest of the taxpayers, the applicant's time, and the abutters' time, she will entertain a motion to table this agenda item pending a decision by the court with regard to the ongoing litigation referenced in Attorney Richardson's March 13, 2013 memo.

Action

Motion: Rick McMenimen made a motion that based on the advice of
applicant's time, and the abutters' time, he moves to table this
to the ongoing litigation referenced in Attorney Richardson's

counsel and th
a
March 13

Second: Eric Botterman

Chairman Shelton asked if there was any discussion from the Board. There was none. She asked if there was any comment from the applicant. She explained this is just to table the item, not to speak to the application.

Bill Doucet, Doucet Survey, stated the Town's Attorney has presented, to the Planning Board, his position as to why the Planning Board should not proceed with the Design Review. His position was based on three criteria: (1) being that Lot 13 is environmentally sensitive and a portion or some of the development rights of Lot 13 may have been relinquished.

That is not for this Planning Board to decide. The forum for that discussion is in the courtroom now. Chairman Shelton stated the motion is regarding the litigation. Bill Doucet stated Item (2) is there was not proper notice to all of the Moody Point residents. He stated that was false. He stated all Moody Point residents were properly noticed per the statutory requirements for notice. He stated it is important to him that the record is set straight. He went on and stated (3) is the attorney's position that there is pending litigation relative to the specific lot in question, Lot 13 at Moody Point. He stated that was going to be decided in a courtroom.

Attorney Justin Richardson stated he wanted to clarify that notice was not provided to all property owners in the Moody Point subdivision. That was the basis of the finding in the letter. He stated Mr. Doucet stated notice was provided to every Moody Point property owner. He explained that Mr. Doucet notified every abutter to the project. If notice was provided to every property owner in the subdivision, that would not be a basis for this Planning Board not to proceed. He looked at the materials and it was his understanding that it was only the direct abutters who were provided notice. His position was that you could not determine who was or was not "specially damaged", because those people had not been given an opportunity to come forward. It may be that everyone in the entire subdivision would be damaged by removal of these conservation restrictions. He stated notice would have to be provided to all of those people to allow them to come before the Board and make their case. Since they don't have notice, they may not be aware that they should be here today.

Chairman Shelton explained this motion was to table the item, because of the litigation, not for failure to notify all property owners in the subdivision.

Bill Doucet stated the statute speaks to how to notice an abutting condominium. You are required per statute to notice an abutting condominium and submit the notification to the officer of the association. He stated they submitted notice to the officer of the Moody Point Community Association. Chairman Shelton stated that was not applicable to the motion. The motion is relative to the litigation that was filed, which is the reason they are tabling the hearing. Bill Doucet stated he was speaking to one of the three reasons why the attorney feels the Board should not hear this application tonight. Chairman Shelton stated those three reasons were not the reason they are tabling the application. The reason the Board has made a motion to table the application is because of the pending ongoing litigation. That is what the Planning Board's motion is. She understood that Attorney Richardson has other issues. Bill Doucet stated he understood that.

Vote: All in favor

Chairman Shelton stated she appreciated everyone's time in coming out this evening for this item.

Questions for Town Attorney Justin Richardson regarding the proposed zoning amendment.

Chairman Shelton explained there are two other agenda items relative to properties located in what is now the B-1 zone. A public hearing notice has been posted for a change of those properties' zoning to an M-2 classification. Regarding RSA 676:12(VI), she asked for an overview of what that means regarding the Planning Board hearing these applications tonight, as they are in between current zoning and proposed zoning.

Attorney Richardson, who was present, stated the key to understanding this is getting the questions addressed in the right order. In the letter he provided to the Board, it states the starting point is, in order to construct any type of commercial building, you have to comply with current zoning. There is an exception that provides that, in cases where an amendment has been proposed to a zoning ordinance, it is basically a race. If the notice of public hearing on the proposed amendment precedes the application, then the applicant has to also comply with the proposed amendment. That puts the Board in a difficult position, because you do not know whether the change will pass. There is a saving provision, where this Board can make a finding as to compliance with both the existing ordinance and the proposed ordinance. You can approve it subject to a condition that, if the zoning ordinance change does not pass, for example, they have to get a variance, for setbacks. He can't comment specifically on any project directly right now and is here on general terms only. Also, once the applicant seeks a building permit, they will be subject to the ordinance that is in effect, unless they meet the exception, which says that, if they applied first, they are not subject to it. Chairman Shelton stated, if the application came in after the first public notice, the Board should be looking at the application relative to both ordinances, the B-1 and the proposed M-2 zoning. Attorney Richardson stated that was correct. The Board is in a

window, where there is some uncertainty now. There is considerable flexibility on the applicant's side for how they want to proceed. They could say they will just design it according to one ordinance under the assumption that it will or won't pass and then proceed on that basis. As long as they understand there is a certain amount of risk there. The Board can mitigate that. He gave the example of if the Board felt the new ordinance was going to pass, there could be certain waivers of things that the plan might not provide for and the Board could make all of the factual findings and determinations relative as to whether this project met those determinations. If the ordinance passes, the Board has effectively incorporated into their decision that this project is or is not in compliance with the proposed regulations. The other approach would be to say that the approval would be contingent upon the granting of a variance for anything that could not be complied with. Chairman Shelton stated the key is, at the time of a building permit, they have to comply with whatever the regulations are that are in effect at the time. After the proposed ordinance gets amended in the process, the zoning that applies is that which is in effect at the time they pull the building permit. Attorney Richardson stated that was correct, because there is that second provision that says that once there is a pending ordinance, you look at which one was first. If the ordinance change was first, then you have to assume that is going to pass.

Elizabeth Dudley asked if there was a time limit on the implementation of a new ordinance. Attorney Richardson stated there was. It is very clear in a traditional town meeting format. It is different here, because we are dealing with a legislative body that is the Town Council (subject to RSA 675:2). In order to figure out what their time frame is, you have to look at the Town Charter. He was not sure that there is a strict time period under the charter. Under RSA 676:12, the building inspector shall not issue any building permit within 120 days prior to the date of Annual Meeting at which the vote would be taken on the zoning ordinance. In Newmarket, the Annual Meeting does not vote to adopt zoning ordinances or amendments to it. The Town Charter in Section 3.13 provides that the Town Council shall have all the powers conferred upon a Town Meeting. The 120 day period under RSA 676:12 would be the date of the Town's Council's vote; however the Town Charter is open-ended as to when this vote would be. There is no specific time limitation, which means the Town Council could continue the ending point of the 120 day period. However, it is unclear what would happen beyond that date; whether the building official would be required to act on the application as the 120 day permit would lapse, or whether the building permit would remain pending until such time the Town Council voted on the matter. You know that the first reading of this town's zoning amendment was on February 6, so you now have a 120 day window that is running from there. It is also not clear whether a second notice of a hearing would have another 120 day window running from that date, as well. There is a lot of uncertainty with no clear answers. The law is written for a traditional town meeting with a specific date for a vote on that date. This Board is looking at different circumstances because Newmarket has a Town Council as its legislative body with no specific statutory deadlines for voting on zoning amendments.

Agenda Item #3 – Review & approval of minutes: 01/22/13, 02/12/13

01/22/13

Action

Motion: Rick McMenimen made a motion to approve the 01/22/13 minutes

Second: Eric Botterman

Vote: All in favor

John Brackett and Dan Wright abstained as they were not on

the Planning B

02/12/13

Action

corrections

Motion: Rick McMenimen made a motion to approve the Newmarket
if required

Planning Board

Second: Eric Botterman

Chairman Shelton stated, on page 2, line 37, it should read "there shall not be snow storage onsite". On page 4, line 6, it should say "Registry of Deeds".

Vote: All in favor

Board at

Janice Rosa abstained due to absence, Dan Wright and John
that time, Elizabeth Dudley abstained as she had not had a

Brackett abst
chan

Agenda Item #4 – Regular Business

Election of Chairman and Vice Chairman

Chairman Shelton stated it has been her great pleasure to have served the Board as Chair for the past year. She appreciates that she has been approached about staying on as Chair, she needs to decline.

Chairman

Action

Motion: Janice Rosa made a motion to elect Eric Botterman for

Chairman

Second: Rick McMenimen

There were no other nominations.

Vote: All in favor

Vice Chairman

Action

Motion: Janice Rosa made a motion to elect Rick McMenimen as Vice

Chairman

Second: Val Shelton

There were no other nominations.

Vote: All in favor

Newmarket Mills, LLC - Public hearing for an application for Site Plan, at Main Street, Tax Map U2, Lots 57, 60B, 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 convert the vacant former "Riverdale Automotive" structure into an eatery, with an attached specialty retail store.

Diane Hardy stated she has gone through the application. This is a minor review, because there is only a small amount of square footage being added to the site plan. She reviewed the application against the checklist and the application is substantially complete. There are a couple of things she noted at this stage of the review. She did not see provisions made for pedestrian and bike facilities. She noted there are a dumpster and an above ground tank on the property line. Those will have to be addressed as part of site plan review and technical review. She is aware there was a groundwater permit issued by NH DES and she is interested in knowing the status of that. At this point, she recommended the acceptance of the application subject to the completion of traffic and parking studies and a technical review by our Town Engineer, Underwood Engineers. She wanted to note there is a request for waivers for parking in front of the building and for soils.

Val Shelton asked if a traffic impact study was typical for minor site plan. Diane Hardy stated it was not. However, the Board should not be looking at this application in isolation from their other application that is before the Board tonight. If you take the square footage of the Riverdale property and combine it with the square footage of the proposed retail building, it goes over the 10,000 square foot requirement that is a minimal threshold for requiring a traffic study. She has already heard citizen comments and concerns about the application with respect to traffic circulation and parking. It would behoove the Planning Board to look at both of these applications together and have the applicant conduct that study, so we have some good information from which to work.

Chairman Botterman stated he was going to suggest that the Board accept the application and then discuss what the Board will require them to submit.

Action

Motion: Val Shelton made a motion to accept the application as substantially complete for a site plan request by Newmarket Mills LLC, Main Street, Tax Map U2, Lot 57C, 60B and 61 in the B1 Zone with a proposed zoning amendment to change the zoning from B1 to M2 is under consideration by the Town Council at the time of the application. The proposal is to convert the vacant former "Riverdale Automotive" structure into an eatery, with an attached specialty retail store.

Second: Rick McMenimen

Vote: All in favor

Jeff Clifford, Altus Engineering, presented the application. With him was Eric Chinburg, owner and developer of the property. Mr. Clifford placed a site plan where everyone could see it. He indicated the location of the existing building and where a freezer would be located off the side. He showed the dumpster location and parking. He stated the parking and traffic circulation is undergoing quite a change. He indicated the current access to the site and showed a second access. They propose that this be one-way in. They applied to NH DOT for a driveway permit. DOT was surprised that they voluntarily made that a one-way in, to eliminate the other access, and DOT is quite pleased with it. It was reviewed by Division Six and passed on to Concord. They hope to hear soon and it was very well received.

He showed the existing conditions, including one of the access points that will be eliminated. They are creating a new one, because there is parking that was created as part of the work that was recently done. The parking was there, but now it is formalized with curbing and striping. Some parking gets lost, but some is added in another section.

Some other considerations included pedestrian access. The Main Street crossing is there. There is an existing walkway going down, which would be continued, so people would no longer have to cross over the driveway which would be removed. People will be coming from the back parking area and we wanted them to get to the building, so they created a walkway for them. They added lawns, and bump outs, trying to make it more pedestrian friendly and provide some separation between the cars and people walking. There is a 24 foot opening, which provides some maneuvering room for cars and they also angled the parking. There is a good area for people to back out of parking spaces.

Other things being added to the project include a patio for the restaurant to have tables out front when the seasons allow. There will be a low retaining wall and a little fence to give some separation. It will have kind of a European feel to the whole experience. There will be opportunities for various landscaping. There is a proposed gas tank for heat. There is existing lighting and lighting on the street, so they were not proposing any additional lighting, except at the building itself. They were trying to minimize putting more lighting along this section of town.

There is existing water and sewer. They will be double checking with Public Works about the adequacy of that.

In terms of storm water, it is a unique situation. They are adding less than 1,000 square feet of impervious surface on this site. He indicated it on the plan. They are adding some areas that are currently not paved, but there is a whole section that is paved now. The net is about 935 square feet of impervious surface being added.

They don't have a lot of opportunities for storm water management on-site. They are at the top of the hill. The crosswalk of Route 108 is right at the peak of the roadway. What happens is all the drainage infrastructure starts away from the site. There are catch basins. Some are too shallow to direct the run-off to them given the grade. One is impossible to get to because of all of the electrical utilities that were put in when things went underground. The last one is a long way away across the street, where there are all sorts of improvements planned for the library. What they are looking to put in as part of both projects is a rain garden or bio-retention swale built into the existing island to the rear that would be able to treat storm water from a pretty large section of the site. This would drain a much greater area. There is a cut in the curb and there is a catch basin there. He stated they would take out some of the pavement around the catch basin, lower the area six inches so water can be stored there. To construct it, they would go down about two and a half feet and put in stone and a filter media, which is where you get all your storm water treatment, about 18 inches of it. The rain garden includes loam, a lot of sand and compost. There would be stormwater treatment over a large area that does not have treatment now.

He stated one of the things that is complicated by the change in zoning is they based the site plan mostly on the change to an M-2 classification. When they asked for waivers, they related to the M-2 classification. As they go forward and the Town goes forward with the proposal for changing the zoning, there may have to be adjustments made.

They did ask for a waiver for parking in the front. This parking is actually to the side so perhaps that meets the existing ordinance. There is existing parking there anyway.

He showed the setback lines for both zones. If it has to meet the B-1 zone, they have a situation where the addition, the freezer and parking would be in the setbacks. They would have to get a variance or there are some options available for lot line adjustments.

They went through many different scenarios and felt this provided a lot of advantages and made a very attractive place for people to congregate. They have a beautiful view across the mills to the river.

Val Shelton stated some of the parking was being removed that is dedicated to the mill now. She asked how many spaces were being removed. Jeff Clifford stated they had a net gain of overall parking of four spaces with their analysis. The existing parking is haphazard on this site. Four spaces were gained overall. They looked at all three developments with the parking. When you look at this development, it is a net gain of four overall.

Val Shelton stated she would like to understand more about the storm water management. She asked about the rain gardens. Jeff Clifford stated the issue was that water goes into a rain garden and you need an under drain, unless it can percolate down. It won't percolate on ledge and the State would not let you percolate here anyway due to the groundwater monitoring that is ongoing. The uniqueness of being on top of the hill (ledge) is there is no infrastructure once you get underground.

Val Shelton asked if they were going to take out the vegetative strip that exists. Jeff Clifford stated there are trees that will remain. There is an area that is not vegetated, which is being extended. They are putting a landscaped area, so it is being expanded.

Jeff Clifford stated they will provide a bike rack. Their employees would probably use it. Elizabeth Dudley stated they could perhaps provide a bike rack for six bikes and the Planning Board could, perhaps, count those towards meeting parking space, for example.

Dan Wright asked if any ADA parking spaces would be affected by the egress. Jeff Clifford indicated where they plan to have an ADA parking space. The existing ADA space was in a remote area. They actually need to be closer to the building. They had a grading issue in one area.

Jeff Clifford stated there are two floor levels in this building. Where the office was is one level and the garage is six inches lower. They are pouring six inches of concrete to raise that up, so they are at the same elevation.

Dan Wright asked about the rain garden during the winter and its maintenance. He stated the snowbanks there might affect it. Jeff Clifford stated one of the best things is they treat the snow melt. What they found is they do not freeze up. The water finds its way down through the rain gardens. There has not been an issue. Because so much salt is used, you use salt-tolerant vegetation. They always use native vegetation. With snow, things find their way underneath. You always see the little tunnels coming out of the snowbanks when the water gets there.

Jeff Clifford showed a rendering of the elevation.

Chairman Botterman stated based on what they heard from Attorney Richardson, the Board will proceed with the review of this site under both the M-2 and B-1 zones. This is designed in anticipation the M-2 zoning, as proposed, passes. If it does not, there will be the need for variances or lot line adjustments. The application has been accepted. He asked what the Board would like to do for review.

Val Shelton asked if there were any waiver requests. Diane Hardy stated there is one for the parking in front of the building. Another was for hydric soils. Chairman Botterman stated the M-2 zone says you cannot park between the building and the street. He agrees with Jeff Clifford that this is not between the building and the street. Val Shelton agreed.

Chairman Botterman stated he disagreed with Diane Hardy's suggestion that the Board should require a traffic study. This is an independent project from the other one. He did not feel this triggers the traffic study requirement. He asked

what the rest of the Board thought. Val Shelton stated they did not ask for a waiver from that. Diane Hardy stated the Planning Board has the authority to waive it. It is very close to the threshold, it is 10,000 square feet if you combine the square footage of that with the 9,600 square foot shopping center. She stated our ordinance does provide the Planning Board with some discretion, where this is a small project. You can require a parking and traffic study if you feel it is necessary. Chairman Botterman stated the design is a huge improvement over what is there. Val Shelton stated she agreed with that. Those two items would be dealt with on the larger project.

Action

Regulations

Motion: Val Shelton made a motion that the Board grant a waiver to

Section 3.22(C)

Second: Rick McMenimen

Vote: All in favor

Action

Motion: Val Shelton made a motion to grant a waiver to Section
delineation of hydric soils on the entire site

4.10(B)(2) of t

Second: Rick McMenimen

Vote: All in favor

Dan Wright abstained, but did not state the reason for the

abstention

Chairman Botterman suggested they establish a Technical Review Committee (TRC). He would like to do this differently than they have done it in the past. He stated having three Planning Board members on the TRC marginalizes the other members. A lot of things get resolved and then they come before the whole Board and the rest of the Board feels like they shouldn't be asking a lot of questions, if other people have made a decision. The TRCs he goes before when he is at his job are department heads and maybe one Planning Board member. If they decide to have a review engineer, they will have them do a review and send letters about that. He felt the TRC process here has gotten way too cumbersome. The TRC should be a meeting with Police, Fire, Water and Sewer to go through their issues. Val Shelton agreed. She felt the TRC meetings should be for technical review relative to non-subjective items in Site Plan regulations. Chairman Botterman stated they were treading on whether these meeting are being unofficial Planning Board meetings with three members in attendance. They go back to the Board and say they have looked at this and are okay with it. Val Shelton stated the Applicant feels like they are in front of a mini Planning Board. Chairman Botterman stated this change should streamline the process. Our engineer will deal with the design consultant and address concerns and come back with a letter. He stated it seemed like we are meeting ourselves to death. If we can reduce some of them, he is for it. He asked if everyone was okay with that tweaking of how we do the TRC process. Everyone agreed. Jane Ford asked if a Board member could sit in to just monitor the process to understand how it works, not having a say, just listening. They could meet the Department Heads that way, too. Chairman Botterman stated it is public and anyone can attend.

Chairman Botterman stated the Board needed to decide whether to send this out for review and, if so, what level of review does the Board want. Does the Board want everything reviewed or just certain aspects? He has seen it done both ways for projects. Diane Hardy stated the Board needed to look at traffic in relation to the overall circulation pattern in that area. Some parking data is needed, so the Board can evaluate whether there is adequate parking. Water, sewer and storm drainage need evaluation.

Elizabeth Dudley asked how the two projects connected architecturally. Eric Chinburg stated they separated them, because they have a restaurateur that would like to get in there as soon as possible. Recognizing this is a separate lot and a small project that is a minor review, they wanted to separate them with the assumption that this could go through

the process more quickly. As far as architectural connection, they want it to look like the Riverdale Garage that is now a restaurant. The other site has been the site of the largest weave shed in North America and had, at one time, the Quonset huts across from the mill, and they have come up with a design they think is somewhat industrial, with a little bit of history and speaks to several architectural themes. They are not really connected architecturally. They separated them, because they have someone who is anxious to get in there and this is such a simple, small thing, they could get it done more quickly.

Chairman Botterman asked Eric Chinburg if he was correct in saying the basic connection between these two projects is parking, access, and egress. Otherwise, if it was not for the shared parking, access, and egress, they would be two completely separate projects. Eric Chinburg stated they are adding net parking and the net impact on parking with this project is negligible. Overall, it is a vehicular communication sort of connection.

Chairman Botterman asked about parking for this facility. He asked what their analysis was for what they thought the parking usage would be. He asked what type of restaurant it was. Eric Chinburg stated it would be a sit down restaurant, with a bar and menu of good food, kind of like Poppers and Riverworks. Typically, they say for every three or four seats, you need one parking space. They have 50 or 60 seats and are providing 17 spaces and then there is everything else available for parking on the site. They think they will be meeting the need onsite for this without really putting demands elsewhere. He understands Diane Hardy's comment about linking everything, but he could argue that, with 17 here, and all the spaces on the street, this site as a standalone would probably be sufficient. Val Shelton stated she thinks of this as a stand-alone. She fully supports the need for the traffic analysis and more parking analysis for the larger project, but this project should be looked at independently, because of the minor nature. It fits into the B-1 zone and even the proposed M-2, it is really about an adaptive reuse of an existing building. It has much less of an impact than the prior use, with cars constantly coming and going. She stated, because it is two separate applications, this being a minor impact, it would be facilitated much more quickly through this process than potentially the second application. She would like to treat this as a separate minor application and not go through the traffic and parking analysis beyond what is required in the regulations. Diane Hardy stated they have no data for parking at this point. The Board needs to look at the data and make sure it meets the Town's requirements. If it comes in under M-2 zoning, there is an opportunity for shared parking and moving the whole parking configuration around in a flexible manner. She was not saying they need a traffic engineer to come in and do a study.

Val Shelton asked if there was any need for an outside engineering review and to what limit would that be for this application. Chairman Botterman stated he did not feel they needed it. He felt this was a reuse of an existing facility. It is a great use of a facility that has been closed. He did not see anything in there that was that technical.

Jane Ford asked if there would be anything there from when it was an auto repair business that they would have to be concerned about. Eric Chinburg stated there are monitoring wells and the latest recommendation of NH DES is no further action is needed, because any contamination has been decreasing. They are monitoring the groundwater with monitoring wells. The NH DES is going to recommend, based on the last results, that there be no further action. Chairman Botterman suggested the Board send this to a TRC meeting just to get water and sewer input and everyone else's input. If they have no issues or if any issues can be addressed, then he was fine with it. He did not feel this was difficult. There is 900 square feet of additional pavement. It doesn't trip any of our requirements. He understood the site. There are not a lot of options there. Val Shelton agreed and felt confident with Diane Hardy and the TRC reviewing the application.

Dan Wright stated spillover in parking had been mentioned. He has received a lot of complaints from businesses about parking downtown. He asked how much spillover was expected. Eric Chinburg stated the typical parking requirements for restaurants are quite conservative. For every four seats you need a parking space. This is contemplated at 50-60 seats and they are putting 17 spaces right there. For every four, there are plenty of spaces. For every three, there would be 20. The argument could be made that onsite parking is supplied for the restaurant's needs. They did a shared parking analysis and there is an excess capacity on the entire Newmarket mills site of somewhere around 60 spaces. He could say to the restaurant owner it is okay for the customers to park in the proposed retail building's lot.

Chairman Botterman suggested that between now and the next meeting, Diane can put together a TRC with the department heads. Diane should also sit with the applicant and go through what the differences are between the B-1 and M-2 zones, with the idea of coming back to the next meeting with an approval. Diane Hardy stated the only major issues between the two zoning districts is the setback. She thought it was perfectly doable to sort through the issues, schedule a TRC meeting and come back with a recommendation for the next Planning Board meeting.

Action

Motion: Val Shelton made a motion that the application move forward to the TRC to be
and to occur prior to the April 9, 2013 meeting and to report back to the full board
application until that time

Second: Janice Rosa

Vote: All in favor

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.

Jeff Clifford, Altus Engineering, presented the application. Eric Chinburg, the owner of the property, was also present.

Jeff Clifford showed a site plan of the property. He stated currently there is fencing in the area to the rear of the lot where construction materials are stored. The area is not all parking. The material there is gravel on top of ledge, so it is very impermeable. Last year during the spring thaw, the snow melt ended up in the street. Eric Chinburg put in a catch basin to resolve that issue and it has worked out quite well this year. This was in response to an earlier question which was raised. The water goes below the snow and runs into the catch basin. He has looked at that a couple of times.

This will be a 9,600 square foot retail building. The plans are oriented toward an approval under the requirements of the M-2 zone. This is key in this case, because of setbacks. He showed the B-1 and then the M2 required setbacks. There is one side where the setback would require a voluntary merger to eliminate the lot line. So, the setback issue will go away.

They looked at a lot of different orientations, and how to best utilize existing parking spaces, and traffic circulation. One of the things they came up with to preserve the number of parking spaces was to have head-in parking in certain areas. Where the existing rip-rap slope is between this and the Polish Club property, they would do line drilling and make a ledge face, so this area can be utilized for parking. 29 existing parking spaces will be impacted by the new development, but they are putting in 41 spaces, so there is an increase of 12 spaces in the whole lot. By adding the 19 spaces along the rip rapped boundary, they will increasing the parking, otherwise they would have had a loss.

They looked at other orientations of the building and it really impacted how the whole site and circulation works in trying to get vehicles in and out. They are talking about, not big trucks, but smaller box trucks which would access the back of the building for loading. They ended up having the circulation such that a truck could come in one driveway and go back out through another. He showed the proposed traffic pattern on the plan. The loading area would not be designed for big tractor trailers. There would be dumpsters that would need to be emptied. Those will be screened. There is an existing exit onto Spring Street that is very close to the intersection. They put in a “bump out” (island) that would pull the traffic further away from the intersection, so when you come out, you are not at the wrong angle and a larger vehicle would not have difficulty maneuvering by having to swing wide, which would obstruct traffic. There is a lot of infrastructure in this location and not much room. There is a telephone pole that has about eight guy wires on it. They want to stay away from that area. There is an existing landscaped island along the street that was done as part of the mill redevelopment site work. There is a section that will be impacted in order to make a second entrance; however they are preserving the width of the island. There is an existing sidewalk, a section that they will have to work around.

They have the front of the building facing the parking lot and Main Street. A lot of that has to do with where deliveries would be. The back of the building will be made more attractive, as well. They understand there are some residential properties there that would be facing the rear of the building. This happens quite a bit on these redevelopment sites. He

has seen more and more grocery stores not just have the plain block on the back, they actually dress the façade up. There will be people entering the building from that side. From a pedestrian point of view, they want to have a crosswalk and bring people up so they can get to the building.

There will be some grade changes, in order for this to all work. Some of the grade has to be cut down. There are some opportunities for landscaping. They would relocate what were just painted islands and make them into landscape islands.

They are looking at putting in a patio for a restaurant use off one end of the building.

Chairman Botterman asked about lighting. Jeff Clifford stated there are lights on the building. He showed a rendering of the building and explained where lighting would be. There is an existing pole there and another that will be relocated. It was all lit and approved by the Planning Board last time they were before them for the parking lot associated with the mill redevelopment. Any doors would have lights. The lights would be "Dark Sky" friendly. It is all very subtle.

Elizabeth Dudley asked if they could put a sidewalk on the landscaped median. Eric Chinburg stated they are talking with a grocer, who is experienced and has several stores and only wants 5,000 or 6,000 square feet on one end. Regarding pedestrian access, people would follow the existing sidewalk from Main Street and come in that way or go around and enter the building from the other side. You could go into the grocery store or into the smaller spaces along the sidewalk that is adjacent to the building. If they make any kind of walkway on the landscaped median, they would lose vegetation and it narrows down the rain garden area significantly. There is a very nice sidewalk along Elm Street, so it is somewhat redundant to also have a sidewalk along the landscaped median.

Diane Hardy went over her checklist. There were a few items she had noticed that were missing. They have information about the total square footage of the shopping village. What they do not know is the tenant mix and types of uses that will be going into the development. Without that information, it is really difficult to assess the parking needs. One of the requirements is there be a schedule of uses, so they can do an analysis as to whether what is proposed for parking is adequate to meet the requirements. Along those same lines, there is a need to see the parking calculations and how they came up with those figures, so the Board can be convinced that the parking does meet the needs of the new development, as well as the existing uses in the mill. She did not see a lot of detail on landscaping. They need to have a more detailed landscaping plan that shows the size, varieties, and dimension of plant materials and more detail on the screening of the solid waste facilities. They will also need some kind of detail on how the gas tank will be screened, also. She stated lighting was discussed and they need the specifications on that as well, even if it is just using the same as what was previously submitted. The driveway permit application has been filed and information was provided on the other application, but she did not see it in this application. The Board also needs to evaluate this and see if it comes in under the new storm water regulations. She did not have a chance to do that evaluation. She stated the TRC should do this, as part of their review of the plans. She recommended that the plans be accepted for review as substantially complete, provided: (1) this additional information is provided; (2) there be a technical review of the plans by the Town Engineer; and (3) there be a cursory traffic and parking study done to see how that it works together to meet the Town's requirements, so there will not be major traffic and parking impacts.

Chairman Botterman asked if the Board felt the application was substantially complete.

Action

Motion: Val Shelton made a motion that the Board accept as substantially complete the application for a 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 application). The proposal is to construct a single story, 9,600 sq. ft. commercial building near Spring Street at the west end of the Newmarket Mills parking lot. The structure will house various businesses, including a small grocery, restaurant, and retail shops

Second: Janice Rosa

Vote: All in favor

Chairman Botterman read a letter from Judith Ryan, President of the Friends of Lamprey Health Care, with concerns about the appropriateness of the visual appearance of the development from the neighborhood. They felt the brick and glass design did not fit the character of the area. They are also concerned about traffic flow. They feel this use and development would have a negative impact on Main Street with respect to traffic safety and volume.

Chairman Botterman opened the public hearing.

Scott Zitkus, representing the American Citizens of Polish Descent Club, asked about the area with the angled ledge. He understood that spaces would be hollowed out of the ledge. He asked if the angled ledge will be removed with or without blasting and a retaining wall will be stuck in there. Chairman Botterman stated they will line drill, which is where they will vertically drill and split the rock and peel it back, he assumed without blasting, so there will be spaces created below that.

Scott Zitkus stated he would like to comment on behalf of his fellow officers of the club. Last time when they lowered the surface of the entire parking lot, they experienced some damage to their parking lot. He would like it to be noted they have some concerns about that. Chairman Botterman stated, what the Board typically does for a concern like that, is to require the developer to monitor the parking lot during construction, take some before photos, so there is a baseline, then take some after photos. So, if there is any damage, it can be addressed by the contractor.

Scott Zitkus stated he did not notice this earlier but if there is a grocery there, he assumes there would be trucks coming and going. He asked where the loading docks were located. Chairman Botterman stated there would not be loading docks, there would be a garage door on the back. Eric Chinburg stated they are trucks that have the lifts to accommodate loading.

Scott Zitkus stated he heard, as the parking lot stands, college students are fighting over spaces. He asked if there was any accommodation for that. Chairman Botterman stated this is the first he has heard of that. He asked if anyone else had heard anything. Diane Hardy stated she heard that employees of downtown businesses have complained about being towed on a few occasions.

Scott Zitkus stated he was not concerned about the location of the gas tank.

There were no further comments and Chairman Botterman closed the public hearing.

Jeff Clifford stated the current M-2 ordinance reads that the front of the building should be toward the street. They have three streets involved with this lot. Main Street is a longer way away and this lot does not directly front on it, so they need will need a waiver (which would apply if the re-zoning as proposed is approved, if not it is moot because that requirement wouldn't apply.) A lot of it has to do with access to the site. If trucks had to come around, you would use up a lot of the parking, trucks would interfere with people and the parking needs to be in the front of the building, because that is the way people are going to migrate to the site. He showed and explained an elevation of the site. He talked about the side of the building facing Spring Street. He stated, if you drive around the back of a large grocery, you would see tanks and dumpsters. On this project, they have everything off to the side, with screening. There will not be big loading dock doors, so there is an opportunity to make it almost a residential scale.

Val Shelton stated this waiver should not be granted until they see the elevation drawing of the Spring Street side of the building. The Board agreed.

Jeff Clifford addressed onsite parking. He stated this situation is unique where the parking on the Spring Street side of the building is not the front of the building and there is screening. Chairman Botterman stated you could make an

argument that is not the front of the building and the ordinance addresses parking in front of the building. He felt it is prudent to ask for a waiver and work through the process to make sure there is no confusion later on. The Board decided not to vote on this waiver until the elevations for the Spring Street side of the building are complete.

The last waiver was for hydric soils.

Action

Motion: Val Shelton made a motion the Board grants the request for a waiver of Section 22B.10, Hydric Soils on the entire site from being required

Second: Dan Wright

Vote: All in favor

Chairman Botterman stated he did feel a full blown traffic study would be a waste of money, in that a full blown study would say that certain intersections had to be studied and no one will be changing any intersections or adding any traffic signals at those intersections. He did feel that it would be appropriate to have a traffic memo addressing the internal traffic flow from the parking lot to the building, with circulation patterns including egress from the restaurant site (Riverdale). He stated once the information is in on what type of tenants are going in, you can do trip generation calculations and discuss the adequacy of the parking.

Val Shelton stated she would like to know what the incremental traffic accumulation will be going out onto Spring Street.

For parking, Eric Chinburg asked if they could piggy back off of the final site plan approval for the mill project, they had to do a shared parking analysis at that time to justify some changes in parking across the street. At that time, the Planning Board accepted a report that said they met all the needs of the existing mill property plus some excess number, sixty he thought, across the street. If they could utilize that report, the Board could look at the most intensive use of retail. He thinks that is four spaces per thousand, so that would be forty spaces. If that is the case, with that previous report, they could solve that. Chairman Botterman stated he was fine with them submitting that report. They don't need to recreate it, just provide it again.

Chairman Botterman stated regarding drainage, it is an existing site that is virtually impervious. He did not think there was a lot to be gained by doing any drainage analysis. It is probably less impervious than what is there now. Jeff Clifford stated information on impervious surfaces is on their plan.

Chairman Botterman asked about the driveway permit. Jeff Clifford stated originally they thought they were submitting for the Riverdale property and they submitted for that project. They have not submitted any driveway permits for the retail project. They will be doing that. The entrance is on the library property. The Newmarket Mills has an easement over that property.

Chairman Botterman stated they should have a TRC for both sites with Department Heads. He asked if the Board wanted an engineering review. Val Shelton stated that her opinion is consistent with Diane Hardy's opinion that any major site plan should go through engineering review. We do not have a Town Engineer, so the burden is on the applicant to pay the cost associated an engineering review of the project. Chairman Botterman asked what type of engineering review they should ask for. Val Shelton stated it should be reviewed relative to our regulations. Diane Hardy stated that was correct.

Chairman Botterman stated it would be helpful if Jeff Clifford could put together a memo for the engineering review about the stormwater, what he did and did not do and why. Just lay out his thought process.

Chairman Botterman asked what a realistic time frame would be to get Underwood on board to do the review. Diane Hardy stated a week. She stated it is the policy not to do the technical review until they get all of the information from the applicant.

Chairman Botterman stated their goal would be, at the next Planning Board meeting, to have a first review from the engineer. If things go well, we will continue this to May.

Action

Motion: Val Shelton made a motion to continue the public hearing for the application
Newmarket Mills LLC, at Main Street, Tax Map U2, Lots 57, 60B, and 61,
change the zoning from B-1 to M-2 is under consideration by the Town Council
2013 meeting and prior to that time to authorize Diane Hardy to have the TRC
relative to our site plan regulations for compliance.

Second: Rick McMenimen

Vote: All in favor

Kyle Pimental, Strafford Regional Planning Commission (SRPC) – Update of Existing Land Use chapter of the Master Plan.

Kyle Pimental gave a PowerPoint presentation. He went through the process of updating the Existing Land Use chapter. They have been working on this for a couple of months with a small subcommittee. This is a summary of what was found.

He stated the funding came from the NH Coastal Program, which is part of DES. There are 17 coastal communities in NH, including Newmarket. For the most part, what they have been doing with Coastal Program funding is planning and management.

For Newmarket, the total cost of this project will be \$5,500. That includes the Existing Land Use update, which is pretty traditional, and the Future Land Use update, which will have a climate adaptation and resiliency focus.

The time schedule was for existing land use to be done over the winter and future land use in the spring. The traditional existing land use chapter was prepared collaboratively between the SRPC and the designated Master Plan subcommittee. They looked at development patterns, existing and current land uses, and smart growth principles. They built off the build out that was completed by Underwood Engineers, but took it a few steps further. They looked at commitments that Newmarket has made, as far as land use and sustainability.

For future land use, they want to look at community vulnerabilities and establish some goals to help Newmarket achieve resiliency for the future and whatever may happen with climate change and sea level rise.

He went over the major differences in land use found since the 2001 plan. The three forms of land use in the 2001 plan were strip, sprawl and scattered. When looking at this, they knew that was not what Newmarket has seen in the last decade. The three forms of land use that really stuck out were residential open space design developments, land conservation, and the redevelopment, growth management and infill development.

Another big difference was the inventory. What was on the books for current land use was using 1994 data and very limited 2000 land use data. The 2001 Master Plan utilized 2000 land use data, but it was incomplete. They looked at the

latest land use data that they had, which was 2010. They defined all of the land use classifications, because there is a giant list of them and it can get bogged down with what the difference between vacant and disturbed land is. So, they broke down each of the classifications to try to make it more reader friendly.

They also looked at existing land use patterns. The three in the original 2001 plan were residential developed, commercial, industrial, and forested. Looking forward, they saw residential stayed the same, but the other three changed.

He described the definition of smart growth. He stated Newmarket has demonstrated its commitment to smart growth in its land use policies. Newmarket has created a unique sense of community and place with its vibrant downtown, mix of uses and housing choices and downtown revitalization, preservation of natural and cultural resources, and land conservation. There was an Open Space Committee established in 2002 and in a seven year period they conserved about 430 acres of land. There are wildlife corridors and greenways.

Residential Open Space Development is a flexible zoning option. It offers residential development that is consistent with smart growth principles. It preserves rural character and promotes cluster housing, preserves large areas of open space providing buffers and more opportunities for agriculture. It encourages corridors of open space. In the chapter, they list 21 developments that have happened since 1978. Those developments are about 1283 acres and, out of that, 585 acres are open space. He described what open space was and went over the history of the Open Space Committee.

This is a great opportunity to talk about redevelopment, growth management, and infill development, with some of the applications that are before the Board now. One is the redevelopment of the Riverdale building. It fits right into this.

He spoke about the 20 million dollar multiphase redevelopment project downtown.

He spoke about the inventory of current land uses. He had the latest 2010 land use data. There is a long list of land use classifications. To make this as easy as possible, they grouped residential, commercial, industrial, mixed use, transportation, and outdoor recreation and said that land was considered developed land. Out of that about 27 percent is developed land. The remaining characteristics are agriculture, forest, water, wetlands, and other.

He talked about land estimates and changes over time going back to 1962 up to 2012. The developed land use in 1962 was about 700 acres. In 2012, there were 2406 acres. This is about a 344 percent change.

There is a huge change in wetlands. This has to do with how the data was collected. For whatever reason, what was considered wetland in 1962 is not what it is considered today. That is why there is a really big jump.

He stated other existing land use patterns were residential areas. This is the biggest developed land pattern. It accounts for about 20 percent of all developed land. Newmarket offers a very wide range of housing opportunities. According to the regional housing needs assessment in 2009, Newmarket is one of only four urban communities within our planning region boundaries that have provided an adequate supply and affordability for all age and income levels. The other three urban communities are Dover, Rochester, and Somersworth.

He talked about the mill redevelopment. The mills are now in the National Register of Historic Places.

He stated public transportation is easily accessible downtown. Wildcat and Coast bus lines are there and you are fairly close to the Durham and Exeter Amtrak Downeaster stations and the C&J Bus Services.

He talked about the Route 108 corridor. Most of the commercial land use in town is located within this corridor. To the north, it is a mix of residential and business activities, auto-related enterprises, professional offices, a laundromat and hardware store. The southern end has a higher intensity of business development. Moving forward there have been recommendations to facilitate commercial development adjacent to the downtown area.

He spoke about the industrial park and the undeveloped B-2 zone. The park is about 25 acres, which extends from Route 108 to New Road and is separated by the railroad right-of-way. It was developed in the 1980s. The residual 270 acres tract that is behind the storage facility largely remains undeveloped. In order for this to be developed, there needs to be proper access.

He talked about the build-out analysis, which shows the community if it continues to grow at the present rate. They based it on current zoning as opposed to individual parcel to be consistent with the work done in 2011 by Underwood Engineers. They wanted to quantify the remaining land that was suitable and available for development. They calculated the amount of undeveloped land by zoning district. From there, they subtracted the amount of non-developable land. Those include wetlands, very poorly drained soils, permanently protected lands and partially developed lands. He went over his analysis to illustrate the remaining developable land in each zone.

He talked about land use and sustainability. The mill development and revitalization of downtown provided commercial and housing opportunities. There is a mix of uses with shops, parks, and workplaces and the public transit within walking distance. The town has protected over 430 acres from development since 2002. There is an open space conservation plan.

The Water Resource and Economic Development chapters of the Master Plan were updated. Drainage and stormwater regulations have been improved. New stormwater regulations were adopted. The environmental overlay districts have been updated.

The residential open space developments were mapped. There is a land use map and a build-out map.

He stated next they will be updating the Future Land Use chapter. They hope to have a subcommittee meeting shortly. He talked about a climate change seminar coming up on March 25.

Val Shelton asked when they would have the draft text for the chapter. The Board discussed it and there will be a public hearing at the April meeting. Val Shelton suggested including Great Bay in the section of smart growth.

Agenda Item #5 – New/Old Business

Diane Hardy stated that she and Elizabeth Dudley put the final touches on the draft landscaping regulations. They sent them out for comments. They gave people until April 1 as a deadline for comments. The Board will discuss this on April 9.

Chairman's Report

Chairman Botterman mentioned the Spring Planning and Zoning Conference on May 11. Val Shelton stated she has been a few times and strongly recommended that anyone who has not gone should go. It gives you all of the basics of the requirements of a Planning Board member. There are really great seminars such as the Board's role in reviewing applications. Elizabeth Dudley stated she has gone and recommends it also.

Committee Reports

Janice Rosa stated the Conservation Commission is having an invasive species removal at Wiggin Farm in April.

Chairman Botterman asked if there was a list of committees that people need to be on. Diane Hardy stated she would provide that for the next meeting.

Planner's Report

Diane Hardy stated they are still looking for a representative to SRPC. They meet quarterly. Chairman Botterman stated he would do that. Diane Hardy stated it has to be approved by Town Council.

Janice Rosa asked about the wetlands permitting of 13 Water Street. Diane Hardy stated they had to provide additional information to DES for the wetlands permit and will re-submit the application.

Agenda Item #6 – Adjourn

Action

Motion: Janice Rosa made a motion to adjourn at 9:42 p.m.

Second: Rick McMenimen

Vote: All in favor