

**FRANKLIN PLANNING BOARD  
REGULAR MEETING AND PUBLIC HEARING –  
COUNCIL CHAMBERS**

**Wednesday, July 25<sup>th</sup>, 2012 at 7:00 p.m.**

**Call to Order:** 7:00 p.m.

- Pledge of Allegiance.
- Roll Call

Present: Brian Colburn, Mayor Ken Merrifield, Tony Giunta, Ted Starkweather, Marty Russo, Bob Sharon, Tim Stangroom, Powell Glenn, Brian Sullivan, David Veysey (late 7:08 p.m.), and Planning and Zoning Administrator, Richard Lewis.

Absent: Anthony Daniel and Michael Freeman.

Member Stangroom was seated in place of absent Voting Member Anthony Daniel. Councilor Sharon was seated in place of absent Voting Member Michael Freeman.

- Approval of Minutes:

❖ June 27<sup>th</sup>, 2012 Minutes

MOTION: Mayor Merrifield moved and Member Sullivan seconded to approve the minutes of the June 27<sup>th</sup>, 2012 Planning Board Regular Meeting. All were in favor of approving the minutes.

**New Business:**

- **P12-09:** Public Service Company of New Hampshire, Owner/Applicant; Vanasse Hangen Brustlin, Inc (VHB), Agent, requests Site Plan Review for new equipment at the existing substation, including the expansion of existing gravel lot, with associated fence and retaining wall, and equipment within the western limits of the existing substation, located at 130 Webster Lake Road, Tax Map/Lot # 076-001-00, New Map # L6, R-1 Zone (Low-Density Residential District) and LP Zone (Lake Protection District).

**MOTION: Member Sullivan moved and Member Starkweather seconded to accept the application of PSNH for an expansion of the Webster Substation for a public hearing. All in favor and the motion passed.**

Laura Games, Environmental Compliance Specialist with PSNH was present to speak. At this time, she introduced Dave Fenstermacher, project Engineer from VHB, to speak on the application. She indicated that the project is a slight expansion to the existing Webster Substation. She stated the expansion would make the electricity more reliable and is part of an overall infrastructure improvement being completed across the state.

Dave Fenstermacher stated the expansion includes installation of new equipment on the existing pad and modifications to the existing fence line, new equipment, the construction of new gravel and concrete pads, site grading which the area will be at a lower level than the existing ground due to the overhead clearance of the existing wiring, and so a retaining wall will be necessary. He stated that new fencing is also part of the expansion. He stated there is a dirt access road off of Webster Lake Road that already has a curb cut, and

this would be upgraded with gravel so that it is suitable for travel during the construction period. The roadway will only be accessed afterwards for upgrades.

There were no current questions from the board.

### Public Comment

Joaquin Hernandez, 125 Webster Lake Road, stated that he lives across the street from the site. He indicated that he would like to hear more about the fencing. He stated he is concerned about the addition of equipment and indicated that he has heard popping in the winter and then no one comes out to check on the site, and he is sometimes afraid there will be a fire.

Mr. Hernandez stated that people walk into this area and drive into this area and make noise and party. He stated he is not quite sure what they are doing in this area. He stated there are snowmobile trails in this area. He is concerned about his freedom and liberty, that he pays a lot in taxes, and people do not respect this area. He stated people are on the property at 1 or 2 in the morning. He indicated when trucks come into the area, they are large trucks that are in and out during the day and night and the traffic shakes his house. He stated again he would like further information on the fencing. Mr. Hernandez asked about what trees will be removed for the project.

Mr. Fenstermacher indicated the existing fence is 8' tall with barb wire on the top of the fence to keep people out. He stated they will be replacing the front existing fence and that the new equipment will be enclosed and tied into the existing fence. He stated no screening trees on the roadway will be removed, that the area is already a cleared area and very limited trees will have to be removed.

Chair Colburn stated to the public that the issue of partying, noise from people accessing the property that don't belong there and the traffic into this area are not issues the board can deal with. He stated that there are City Council members on the board who have heard the concerns and can address the issues. He stated this is a police concern.

Member Sullivan stated that he has utilized this dirt road to access this area frequently and has noticed dumping and beer cans as if people are partying in this area. He stated there is drinking that goes on here. He asked about the possibility of putting a gate in off of Route 11 to help restrict the access to the area. He stated that it also gets used for access to the railroad tracks by pedestrians and snowmobiles.

Chair Colburn asked if the board would like to place a condition on the approval about PSNH considering put in a gate and working with Brian Sullivan on this matter. Member Sullivan stated that he can meet members of PSNH at the property to determine the best location for the gate. Member Giunta's concern was of safety for snowmobilers with a gate and whether PSNH would be liable if a snowmobiler utilized this access and hit the gate and got injured. Member Giunta stated he would hate to have to have PSNH come back with a new application because legal they are told the gate should not be put in. Chair Colburn stated that the condition he is proposing is that PSNH consider putting in a gate. He stated that if legal they are informed that they should not, it would be held up. Member Sullivan stated that there are other access ways with gates and he can work with them to get the most appropriate gate put in, and will make sure that it meets requirements and safety is definitely a concern.

**MOTION: Member Sullivan moved and Member Giunta seconded to approve the Site Plan application [P12-09] of PSNH for an expansion to the Webster Lake Road Substation. The approval shall be consistent with the draft approval document prepared by the Planning and Zoning Administrator and submitted for review to the Planning Board**

**prior to the 07/25/12 hearing. The approval includes the addition of the following condition and finding regarding the placement of a gate, as a revision made by the board that shall be incorporated into the final approval document:**

**Finding:** The applicant has expressed a willingness to explore the installation of a gate to help deal with the noise related problems raised by the public.

**Condition:** Per the finding, PSNH shall consider the installation of a gate, in a location to be determined in the field, to help prevent or better control trespass problems that create noise and litter and which impact the abutter. Whether or not a gate can be installed will be dependent on a liability review by counsel for PSNH.

**All were in favor of the motion as additional finding and condition.**

*At this time, Mayor Merrifield again recused himself regarding application P12-07.*

*Member Russo stated that he wanted to acknowledge the receipt of an email he received from Chair Colburn and the City Administrator on whether or not he should recuse himself as an abutter to the property. He stated he reviewed the planning and zoning guidelines and while there exists some residual undefined perception that being an abutter somehow negates the ability to make an informed and unbiased decision, I will not refuse to recuse myself out of hand, without accessing the board's vote. He stated if the board feels that he should then he will, but he has no financial interest whatsoever in this matter and that he never has and doesn't plan on it. He stated he has no predisposition one way or another of how the applicant will or will not use the property according to the laws and the decisions the board makes regarding the zoning ordinances. He stated he has spoken with counsel and there are not hard and fast violations or perceived violations that could perhaps affect any conflicted parties, since there are none and this is just the applicant and the city of Franklin, so he sees no reason why he should have to recuse himself on this matter. He did however state he will leave it up to a vote of the board, as there are more experienced members present and if they feel he would further complicate or inhibit a fair and impartial adjudication of this issue then he will stand down.*

*Chair Colburn stated that he knows, through prior discussion with City Counsel, that board members must maintain the jury standard and as he is a direct abutter, there could be an appearance of favoritism or no favoritism, based on the relationship with the applicant. He stated he would personally err on the side of caution, to avoid any future legal hassle either from the applicant or a member of the public that may not agree with whatever decision is made by the board. He stated that as there are enough members present this evening to have a quorum, that he feels it best that Member Russo stand down, but that the board can take a non-binding show of hands vote.*

*Member Giunta asked for clarification from Member Russo that Legal Counsel was asked about this situation and what their response was or if they were not asked. Member Russo stated that legal counsel was not legally involved, that this was an informed opinion by them. He stated that legal counsel reading was that if essentially there was any perceived notion of conflict or of interest in the matter, whether it's financial or property related, that I should immediately recuse myself. However, if there were no issues, that the statute prohibits just the mere unquantifiable nebulas perception that there is a conflict of interest if there is none. If it is explained, it should be brought out as I have for the board and for the record, and that if anyone feels there is or could be some sort of quantifiable conflict of interest or financial interest, that it would be best if I step down. He stated there is no requirements that he accept and recuse himself for the*

*mere potential that there could be down the line. If there were conflicting parties, if the applicant had one side versus the other, this is a different situation and it becomes more judicial as the chairman has pointed out.*

*Member Giunta asked if this question has been posed on him, on a moral basis and Mr. Russo stated this was correct.*

*Member Starkweather stated he can see where Member Russo is coming from and by virtue of being on a board of this type eventually board members will be abutters to someone somewhere somehow. He stated that as Mr. Russo has voiced his opinion on this matter at an earlier meeting that this could be construed as forming an opinion before hand. He stated that other than that he has no problems with Member Russo being on the board for this matter.*

*At this time, there was a hand vote of the board. Chair Colburn voted that he thought Member Russo should recuse himself and the rest of the board voted that he not have to step down.*

### **Old Business:**

- **P12-07:** Bronwyn L. Asplund-Walsh, Owner/Applicant, requests a Special Use Permit for a Bed and Breakfast, with no more than four bedrooms. The business will be conducted in the existing attached carriage house. The property is identified as 296 Webster Lake Road, Tax Map/Lot # 035-402-00, New Map # K4, LP Zone (Lake Protection District).

Chair Colburn stated that last month the board went through the tests and public input was received. He stated the board gave conditional approval for two bedrooms for the bed and breakfast. He stated Mr. Lewis sent a memo out to the board and the concern is the loading capacity for the septic, in response to the number of guests per room, for which the board has received clarification. Member Colburn stated he doesn't know if there needs to be any reason for the board to review the tests further.

Mr. Lewis stated that the applicant may have new testimony and a letter was received from Deb Hinds regarding the addition as well as far as the Employees adding 10 gallons per day to the loading.

Ms. Bronwyn Asplund-Walsh was present to speak. She stated that she also received the memo from Richard Lewis on Friday morning, which didn't leave her much time to prepare a response. She stated that she would like to leave the bed and breakfast at two bedrooms and doesn't want the previous decision by the board to be rescinded. She stated that she is submitting to the board an affidavit, signed by herself and a Notary, that she wanted to submit to the board members and for the record (see file) and then began to go through the affidavit. She has contacted the State and has begun her permitting process; she has sent money to advertising and paid for furniture for these rooms. She stated the existing septic is for seven bedrooms. She then referenced an email from Deb Ryba, which she stated clearly states that the 3<sup>rd</sup> floor, which has no water or heat, has always been considered a finished attic area for assessing purposes. She stated that Deb Ryba went back to 1988 and the area where the two rooms are on the third floor is considered finished attic. She stated that in 2002 she received a building permit for the carriage house for the two bedroom family apartment, and when the assessors went out during a revaluation period that year the third floor was still put as finished attic and the assessor stated that one of the bedrooms in the apartment was too small and used for storage. The Assessors from the City met with the owner, per Deb's email, and the information was reviewed and there were 5 bedrooms in the main house (including the apartment) and two bedrooms in the guest house. She stated that at no time has her house been classified as a 9 bedroom.

Ms. Asplund-Walsh stated that she also spoke with Richard Lepene after receiving his letter and she stated that in 2009 she had applied for a building permit for two bedrooms in the ell and this was what the 9 bedroom septic was done for, but as she decided not to do this work, they never put in the new septic.

Ms. Asplund-Walsh indicated that per her affidavit, she is satisfied with only having a 2 bedroom bed and breakfast and at a time when she decides to upgrade her septic, then and only then would she like to be able to add 2 more bedrooms to the bed and breakfast. She stated that this is stated in the last point in her affidavit.

At this time, she stated that if the board does rescind her approval, that she would have no option but to take the city to court. She stated she sees no justification in the board rescinding their previous approval.

Ms. Asplund-Walsh indicated there was a question as to whether the property is sold. She stated that the board could condition the approval that the Bed and Breakfast does not transfer, and that any new owner would need to reapply.

Member Colburn stated that Richard Lewis gave the board a few different scenarios and it appears the proper scenario would be #1. This explains that there would only be allowed the 2 bedroom guest house, 3 bedrooms in the main house and the 2 bedroom bed and breakfast.

Ms. Asplund-Walsh stated that in her main house she has 3 bedrooms, one with a queen bed, and two with double beds, the guest house has two bedrooms, both with double beds, and that the Bed and breakfast would have one double bed and one trundle bed in the small bedroom.

Chair Colburn asked if she was using the 2 bedroom in-law in her count and she stated that she is not and she is going to use this space for the bed and breakfast and that there would no longer be the in-law apartment. She stated she would like the ability however to revert the space back to an in-law apartment upon sale of the property so the rooms can be used. She stated that the Johnson's used this area for their servant's quarters and this area has always been used. She stated that currently only two people are residing in the main house, being her and another woman.

Ms. Asplund-Walsh stated that the name of the Bed and Breakfast is going to be historical and will be called Aiken Manor Bed and Breakfast. She stated the property is ideal for this type of use as there is the rail trail behind the property for hiking, the lake and the snowmobile trail.

Chair Colburn indicated that there are two conditions being put forth to the board for addition to the previous approval, being that the two bedroom in-law apartment approval be rescinded for now, however, in the event the that property is sold that the space would revert back to an approved in-law apartment, but the Bed and Breakfast use would need new approvals by a new owner; and condition 2 that the two rooms on the third floor not be used as bedrooms at any time.

Member Starkweather stated that the changes recently made to the Bed and Breakfast were that the property needs to be a single family owner occupied and not in a detached structure. Ms. Asplund-Walsh stated that the carriage house is attached to the main house and is not a detached structure. Member Starkweather asked about the guest house and Ms. Asplund-Walsh indicated that this would remain an approved rental property. Member Starkweather then asked for clarification where the Bed and Breakfast rooms would be located and Ms. Asplund-Walsh explained.

Member Starkweather indicated that Ms. Aplund-Walsh would want to contact Chuck Bodien regarding sprinkler and alarms, as if there are more than three individuals living spaces this may be necessary. Ms.

Asplund-Walsh thanked him for the information and indicated she would contact Mr. Bodien. She stated that the State of NH indicated to her that she would need hardwired smoke detectors, but did not indicate that sprinklers would be necessary.

There was a question on the reversion back to the in-law apartment. Richard Lewis stated that down the road if the property changed hands and there was a question on the family apartment, he would be happy to write a letter with language indicated that it is approved, upon sale, but that the Bed and Breakfast would need re-approval by any new owner if this use wanted to be continued.

Member Russo asked for clarification that there was both no water and no heat on the third floor and Ms. Asplund-Walsh indicated that was correct.

Public Comment: None.

### Board Discussion

Chair Colburn stated that last month the board granted conditional approval for 2 bedrooms for the bed and breakfast and indicated that the owner is now asking to remove her request for 2 additional bedrooms for the bed and breakfast. Ms. Asplund-Walsh stated that was correct and that she would ask for the 2 additional bedrooms for the bed and breakfast unless she upgraded her septic system.

Richard Lewis stated that he can put in a condition in to the decision that the third floor not be used. Angie Carey stated that maybe in that condition reference the affidavit that was submitted into the record by Ms. Asplund-Walsh.

**MOTION: Member Sullivan moved and Member Starkweather seconded to add a finding that referencing the affidavit and indicating that the third floor rooms are not allowed to be used as bedrooms.**

Member Veysey asked how the City would police the use of the third floor as bedrooms and how a new homeowner would know that this rooms cannot be used. Angie Carey stated in the past the board has asked that the applicant record the decision, and in this case it might not be a bad idea to record the decision and the affidavit together so that upon a title search for a new owner this information would be available. Ms. Asplund-Walsh stated that she would agree with doing this.

Member Giunta stated that legally he doesn't think the 2 rooms on the third floor could be used for bedrooms anyway or listed as bedrooms during a sale, as they do not have proper egress.

**All were in favor of this condition and having the document and affidavit recorded at Merrimack County Registry of Deeds.**

Richard Lewis asked about adding a clear finding to the decision that based on the discussion at the meeting on July 25, 2012 and per discussion with the applicant, that the applicant withdraws the request for two more bedrooms in the bed and breakfast, but can come back to the board with an application to add these two bedrooms upon upgrading her septic system.

**MOTION: Member Russo moved and Member Sullivan seconded that the board add 3 findings and 2 conditions to the existing conditional approval, which would include:**

**1) Recording of the Approval and Affidavit;**

- 2) **That if the property is sold, that any new owner would have to reapply for the bed and breakfast approval;**
- 3) **That if the Bed and Breakfast is abandoned that the two bedroom in-law apartment can be reinstated.**

**All were in favor and the motion passed.**

Member Giunta asked that councilors and Mayor let the City Council know that the process does work.

**Public Comment:** None.

**Other Business:** None.

### **Planner's Update**

Mr. Lewis stated that the Upper Merrimack River Local Advisory Committee (UMRLAC) is looking for 50 minutes of the board's time at their August 22<sup>nd</sup>, 2012 meeting of the board. He stated he is not sure what the meeting is regarding, but that it would include an introduction, summary, fact sheets, and Question and Answer period. The board indicated that they would like Dick to have them reduce this time to 30 minutes and indicated that the board should receive all information on paper.

### **Adjournment**

**MOTION: Member Sullivan moved and Member Starkweather seconded to adjourn the meeting of July 25<sup>th</sup>, 2012, at 8:12 p.m. All were in favor and the meeting was adjourned.**

Respectfully submitted,

Angela M. Carey  
Planning and Zoning  
Assistant to the Administrator