

Present: Vice Chair Jack Karcz, Selectmen's Representative Roger Barham, Jack Downing, Andy Kohlhofer, Paul Powers, alternate member Mike Wason, RPC Senior Planner Jenn Rowden, Building Inspector Greg Arvanitis, and Land Use Administrative Assistant Casey Wolfe

Also Present: Brianna Rislove, Marjorie Rislove, Leon Holmes Jr., Julie Cooper, Kyle Roy, Brian Shapiro, Susan Rislove, Ellen Rislove, and Gene Cordes

Mr. Karcz opened the meeting at 7:00 pm.

## **I. MINUTES**

Mr. Kohlhofer made a motion to approve the minutes of June 6, 2018. Mr. Downing seconded the motion. The motion passed 6-0-0.

## **II. CONTINUED BUSINESS**

Mr. Karcz appointed alternate member Mr. Wason to vote on behalf of Mr. Hunter.

### **Public Hearing for a minor site plan review submitted by R. Cooper & Sons Paving who seeks to store several dump trucks, working vehicles, and some miscellaneous machinery at 225 Main Street (Map 3 Lot 150).**

As a member of the Board of Selectmen, who have released a letter stating their position on the application, Mr. Barham recused himself from being a voting member for this application. Applicant Julie Cooper stated that it was not possible to find a surveyor to draw the plans in this short period of time. She did have an old site plan drawing to scale where she marked the pavement boundaries, the DOT approved driveway, and proposed landscaping out front. She did not mark on these plans how the trucks would park on the site. She stated that the driveway meets all the requirements the State has. Ms. Cooper also addressed the abutters' concern from the previous meeting about diesel fuel that is sprayed on the trucks to act as a lubricant for the asphalt. She has since then contacted the asphalt plant and found out that it is a soap-based formula that is 100% biodegradable that gets sprayed on the trucks. She also had a packet of information about asphalt. After reading from this information, Ms. Cooper stated that asphalt is not harmful to the environment. She passed out a packet of this information to each Board member. She stated that a surveyor would not be able to help her until August or September. Ms. Cooper explained that what she passed out is already to scale and she was not sure what else the Board needed.

Ms. Rowden explained that a professionally drawn site plan would show building setbacks, wetland delineation, river bank boundaries, the driveway, vegetation, and where the trucks would be parked. If the Board required the applicant to switch to the major site plan application, all of these components would be required in the site plan drawing. Mr. Kohlhofer stated that he is comfortable keeping the application a minor. He recommended adding curbing and showing snow storage on the plans. He stated that the whole area already has cars that park there every day. He did not see why several trucks would be more harmful than the hundreds of cars that are

already on that road. Mr. Powers stated that he was more concerned about the diesel fuel that gets sprayed on the trucks. Mr. Kohlhofer argued that the trucks are sprayed with biodegradable soap, not diesel fuel. Ms. Rowden pointed out that the applicant still needs a conditional use permit for having a business in the flexible use district and another conditional use permit for having a business in the aquifer protection district. Mr. Powers did not see how the Board could continue with this as a minor application, because it will have greater than a minimum impact. Mr. Lavelle stated that he agrees with Mr. Kohlhofer. The applicant would be decreasing the paved area and will only use the site for parking trucks. He felt it should remain a minor site plan application. Mr. Kohlhofer pointed out that there will be no stored asphalt on site. Mr. Lavelle felt that the site plan submitted is sufficient.

Ms. Rowden stated that they are about thirty days in since the Board accepted jurisdiction of the application. She explained that the Board can vote on the conditional use permits this evening, they can continue the application, they can deny the application, or they can approve with conditions. She also pointed out that the Board could rescind the decision they previously made about accepting jurisdiction of the application. They could also rescind their decision that this application falls within the threshold of being a minor site plan application. Mr. Kohlhofer was not sure what more information the Board would need. He felt that the plan could use curbing at the end of the paved area. Ms. Cooper stated that she could make the existing curb more significant. She also stated that the Conservation Commission wanted signage that marked the setback from the Exeter River. Mr. Lavelle stated that simply having posts is a good idea for this. He did not think boulders marking the setback was a good idea. He also stated that the applicant could get a soil scientist to mark the riverbank quicker than they would be able to get a surveyor to do anything.

Mr. Kohlhofer made a motion to open the discussion to the public. Mr. Downing seconded the motion. The motion passed 6-0-0. Marjorie Rislove told the Board that she counted 224 cars between 7:00 am and 7:30 am. She also counted 313 cars between 4:55 pm and 5:25 pm. She felt that the volume of cars that go by this site must be a safety issue. She also stated that exposure to asphalt fumes can cause headache, dizziness, nausea, and vomiting. Ms. Rislove stated that she already has all these symptoms. She had two MRIs and the results were that she did not have a brain tumor. After a lot of testing, the doctors determined she has severe sensitivity to diesel fumes and asphalt – anything made from oil. She stated that if this application goes through, she will have to sell her house. She felt that she would not get as much money for her home with this use across the street. Ms. Cooper stated that the trucks do not come back with asphalt in them. Ms. Rislove stated that if they are using the biodegradable spray, then there would be residual asphalt in the trucks because this formula does not work as well as diesel fuel does as a lubricant.

Road Agent Leon Holmes, Jr. stated that the residual asphalt stays in the truck no matter what. Ms. Cooper stated that asphalt is not toxic to the environment. She explained that after the truck dumps the load, the truck does not get sprayed again until it goes back to the asphalt plant. Mr. Powers asked if other tools and equipment get sprayed. Ms. Cooper stated that the other tools do not get sprayed because they are coated with a specific material for asphalt. Ms. Rowden suggested requiring the applicant to submit a standard operating procedure that describes specifically how the company operates and does their work. Any materials used for the job should be documented for the Board as well. Ms. Cooper stated she can get this information to

the Board. She also stated that they only haul asphalt out of one asphalt plant. Ms. Rislove stated that asphalt is on the hazardous substance list when it is wet. It is not safe until it is hardened. Ms. Cooper stated that there would be no asphalt on the trucks when they come back to the site. Mr. Shapiro had a picture from the May 19<sup>th</sup> site walk of the back of one of the company's trucks. The Board passed around the photo. Mr. Cooper explained that the miscellaneous equipment that they would store at the site would be the rollers on the trailer, the bobcat, whackers, saws, and jackhammers.

Ms. Cooper stated that the trucks and paving equipment gets washed once a week at a truck wash. Ms. Rislove emphasized that asphalt is a hazardous material. Brianna Rislove asked the applicant where she got her information about asphalt. Ms. Cooper explained that asphalt plants are guided strictly by Federal and State guidelines. They have strict rules and regulations that they have to follow. Ms. Brianna Rislove wanted the exact substance that the asphalt plant uses to spray the trucks to be documented. Ms. Cooper says that she will get that information. Mr. Shapiro asked how the Town is going to enforce this operation. Ms. Rowden stated that the Board could require an annual soil test. If the site is out of compliance, then the code enforcement would take action. If there is a spill, it would be a State and Federal concern. Mr. Shapiro would rather not fix a problem after the fact. Mr. Lavelle made a motion to close the discussion to the public. Mr. Powers seconded the motion. The motion passed 6-0-0.

The Board discussed whether or not this application should remain a minor application. Ms. Rowden read from the regulations, "If the Board determines that the impacts of the proposed project presents a greater than minimum impact, the application shall not be eligible for a minor site plan." Mr. Karcz stated that if the Board asks for any of the requirements in the major site plan application, then they have violated the requirements for a minor site plan application. Mr. Kohlhofer stated that the only additional item he wants to see on the plans is the marking of the setback from the river. Ms. Rowden explained that these markings would be on the ground – not on the plans. Mr. Lavelle stated that no one seems to have an issue with the plans. Any issues are with the proposal itself. Ms. Rowden stated that the Board can go over the conditional use permit applications. If either of these permits are denied, then the question of major versus minor is moot. She reminded the Board that they can put conditions on the conditional use permits. Each permit needs its own public comment period.

Mr. Lavelle made a motion to consider the conditional use permit to have a business in the aquifer protection district. Mr. Powers seconded the motion. The motion passed 6-0-0. The Board members looked at the four criteria for a conditional use permit in Article 12 Section 1203.6.F.2 of the Fremont Zoning Ordinance. The applicant has to meet all four criteria to receive this conditional use permit. After some discussion, Mr. Kohlhofer made a motion to open the discussion to the public. Mr. Lavelle seconded the motion. The motion passed 6-0-0. Mr. Holmes stated that this proposal will affect people's lives. Mr. Shapiro stated he was denied for two different uses on this site that have a smaller impact than this proposal. He stated that this proposal should not be an allowed use. Mr. Cordes suggested that the Board gets some documentation about asphalt. Mr. Kohlhofer stated that they already have documentation from the applicant that asphalt is not hazardous. Ms. Rowden stated that the Board does not have a line-by-line description of their operation that explained what chemicals they use. She suggested that the Board ask for more information and continue this conditional use permit. Mr. Lavelle

felt the MSDS (material safety data sheet) of the chemical they spray their trucks with would be good to have. It would also be nice to have their procedures in writing. Mr. Kohlhofer made a motion to close the discussion to the public. Mr. Lavelle seconded the motion. The motion passed 6-0-0. Ms. Rowden suggested that the Board continue this conditional use permit so that the applicant can provide documentation of their procedures and the MSDS sheets. Mr. Kohlhofer made a motion to continue this conditional use permit to the July 11<sup>th</sup> Planning Board meeting. Mr. Lavelle seconded the motion. The motion passed 6-0-0.

Mr. Lavelle made a motion to consider the conditional use permit to have a business in the flexible use district. Mr. Kohlhofer seconded the motion. The motion passed 6-0-0. Ms. Rowden stated that there are no specific criteria for this conditional use permit. After some discussion, Mr. Lavelle made a motion to open the discussion to the public. Mr. Powers seconded the motion. The motion passed 6-0-0. Mr. Holmes stated that during rush hour route 107 is extremely busy. He had concerns about the trucks and trailers backing into the site or backing out onto the road. He asked if there was space for all of these trucks and trailers to park and still have room to make a loop. Ms. Cooper felt that there is enough space for the trucks to make a loop on the property. There was some discussion about the hours of operation. Ms. Cooper stated that the trucks come back at different times depending on the day. Ms. Rowden stated that the proposal submitted by the applicant states that hours of operation as 7:00 am to 7:00 pm. There was more discussion about how busy the road is. Mr. Karcz asked how the trucks will turn around when all the trucks are on site. Ms. Cooper stated that she has seven trucks. Mr. Powers mentioned that the employees' cars will also take up space on the lot. Ms. Rislove stated that she counted 54 vehicles going by in four minutes. In ten minutes, she counted 105 vehicles. In half an hour, she counted 313 vehicles.

Ms. Rowden stated that she cannot evaluate if there is sufficient room for the trucks to park and turn around. She suggested that the Board ask the town engineer to make that determination on the applicant's dime. Mr. Holmes asked what determined that this application is a minor site plan and not a major application. Mr. Lavelle explained that originally there were no proposed changes to the site. Ms. Rowden stated that the applicant can repave the exact area that is already paved without needing a variance. NHDOT wants the driveway to be narrower. Mr. Karcz would like the town engineer, Dan Tatem of Stantec, to calculate if there is enough room for the trucks to park and turn around on the site. Ms. Rowden explained to the applicant that Mr. Tatem would estimate how much money needs to be in escrow with the Town to pay for his time. Mr. Karcz asked if the public had any more comments. Mr. Cordes suggested that the Board consider requiring visual barriers between the uses. There was some discussion about this. There was some discussion about the various issues that came up that evening. Mr. Lavelle stated that the Board is going to require the town engineer to confirm that the trucks have room to park and turn around at the site. Mr. Cordes asked to make sure the town engineer includes the space the employee vehicles would take up in the calculation. The applicant will also need to provide information about the size of the trucks and the trailers.

Mr. Kohlhofer made a motion to close public comment. Mr. Powers seconded the motion. The motion passed 6-0-0. There was some discussion about how much time would be needed for the engineer to do these calculations. Mr. Lavelle made a motion to continue this conditional use permit to July 11<sup>th</sup> and to request that Mr. Tatem confirm that there is sufficient room for the

trucks to park and turn around on the site. Mr. Kohlhofer seconded the motion. The motion passed 6-0-0. There was some discussion about curbing. There was also some discussion about having a soil scientist mark the riverbank and the buffer. Ms. Rowden reminded the Board that the purpose of the 250 foot setback is to ensure nothing would be in the Shoreland Protection Act district. Mr. Karcz stated he would like the buffer to be marked so that no activity occurs within that setback. Mr. Lavelle felt that the current pavement is outside of that buffer. The Conservation Commission would like this setback to be marked with signs. Ms. Rowden stated that the Board can require the applicant to install a fence or signs at the setback. Mr. Kohlhofer made a motion to continue this public hearing to July 11<sup>th</sup>. Mr. Lavelle seconded the motion. The motion passed 6-0-0. The applicant and the abutters left at 8:53 pm.

### **III. NEW BUSINESS**

Mr. Barham joined the Board as a voting member.

#### **Public Hearing for a Change of Use submitted by Kyle Roy who seeks to operate his welding and fabrication business, KDR Welding and Machine, at 326 Main Street, Unit 6 (Map 3 Lot 37).**

Mr. Roy stated that he currently operates his business in Stratham and he would like to relocate because he needs more space. Ms. Rowden explained to the Board that the applicant's original letter of intent stated that he would periodically service vehicles and engines. Because this site is in the aquifer protection district, that use would not be allowed. Mr. Roy explained that he had that in the original letter because he sometimes works on his own truck. Ms. Rowden suggested to the Board that they have as a condition that the business operates as proposed and that there shall be no servicing of engines or vehicles on the site. Mr. Roy explains that he assembles engines. Ms. Rowden reiterated that the Board can make a condition of the approval that the business operates as described in the applicant's letter dated June 9, 2018. Mr. Roy explained that he would not be doing any automotive repair. Mr. Roy also explained that his business generates basic shop noise. He has an air compressor that runs a lot and he operates his business completely inside.

Mr. Lavelle made a motion to accept the application as complete. Mr. Kohlhofer seconded the motion. The motion passed 7-0-0. Mr. Lavelle made a motion to open the public hearing to have a business in the flexible use district. Mr. Kohlhofer seconded the motion. The motion passed 7-0-0. Mr. Arvanitis asked if there was a sprinkler system in the building. Mr. Roy stated that according to the seller there are fire walls and a functional sprinkler system. Mr. Arvanitis stated that he would like the most recent sprinkler test report. Mr. Barham felt that the Planning Board should defer this issue to the Building Inspector. Mr. Lavelle made a motion to approve the conditional use permit to have this business in the flexible use district. Mr. Kohlhofer seconded the motion. The motion passed 7-0-0. Mr. Kohlhofer made a motion to approve the change of use based on the letter of intent submitted to the Planning Board on June 9, 2018 with the condition that no vehicle repair can be done on the site. Mr. Lavelle seconded the motion. The motion passed 7-0-0. The applicant left at 9:05 pm.

### **IV. OTHER BUSINESS**

### **Earth Removal Permit Renewals**

Earlier in the day, Mr. Tatem distributed each site walk inspection report for each gravel site in town. There was some discussion about these reports. In these reports, Mr. Tatem has given an updated estimate for the amount of money that each of these sites should have in escrow with the Town for reclamation purposes. Mr. Tatem has estimated that three of the four gravel pit sites should have \$83, 853 of surety in place. His estimate last year was \$79,860. These three sites each currently have \$59,895 in escrow. There was some discussion that the Board previously required only 75% of the funds to be in place. Ms. Rowden recommended that the Board extend the 2017 earth removal permits an extra month. The Board decided to have the gravel pit owners in to discuss these reports on July 18<sup>th</sup>. There was some discussion about the rates that Mr. Tatem used in his calculations. Mr. Kohlhofer made a motion to extend the 2017 earth removal permits so that they expire on August 1, 2018. Mr. Lavelle seconded the motion. The motion passed 7-0-0.

### **Circuit Rider Contract**

After some discussion, Mr. Barham made a motion to sign the renewal form for the circuit rider contract with the Rockingham Planning Commission. Mr. Lavelle seconded the motion. The motion passed 7-0-0.

### **V. CIRCUIT RIDER BUSINESS**

Ms. Rowden announced that the zoning ordinance subcommittee is scheduled to meet on June 28<sup>th</sup> at 1:00 pm at the town hall.

### **VI. ADJOURNMENT**

Mr. Lavelle made a motion to adjourn the meeting at 9:19 pm. Mr. Powers seconded the motion. The motion passed 7-0-0.

Respectfully submitted,

Casey Wolfe  
Land Use Administrative Assistant