

## **LONDONDERRY, NH PLANNING BOARD** **MINUTES OF THE MEETING OF JULY 13, 2016 AT THE MOOSE HILL** **COUNCIL CHAMBERS**

Members Present: Art Rugg, Chair; Scott Benson, Assistant Secretary; Rick Brideau, CNHA, Ex-Officio; Giovanni Verani, Ex-Officio; Leitha Reilly; Al Sypek; Ted Combes (alternate member)

Also Present:

John Vogl, GIS/comprehensive Planner; and Laura Gandia, Associate Planner (TEMP)

Chairman Rugg called the meeting to order at 7:00 PM, and began with the Pledge of Allegiance. Chairman Rugg appointed alternate member, Ted Combes, to vote for Mary Soares.

### **ADMINISTRATIVE BOARD WORK**

#### A. APPROVAL OF MINUTES

Member A. Sypek made a motion to approve the minutes of June 8, 2016 as presented. R. Brideau seconded the motion. The motion was granted, 6-0-1. **The Chair voted in the affirmative. S. Benson abstained.**

#### B. REGIONAL IMPACT DETERMINATIONS

- Site Plan: 90 Wiley Hill Road, Map 5, Lot 14, Zone AR-1 - CMS Limited Partnership & Varsity Wireless (Applicant)
- Site Plan Amendment: 32 Industrial Drive, Map 28, Lot 18-4, Zone GB, Freudenberg Real Estate L.P. (Owner)
- Lot Line Adjustment: West and Elwood Roads, Map 2, Lot 43; Map 2, Lot 44; and Map 5, Lot 40, Zone AR-1, Belize Real Estate LLC, Continental Paving, Inc. and Elwood Rev Trust (Owners)
- Subdivision: West and Elwood Roads, Map 2, Lot 44, Belize Real Estate LLC (Owner)

J. Vogl gave a brief description of the above projects and recommended that the projects are not developments of regional impact, as they do not meet any of the regional impact criteria provided in the guidelines prepared by Southern NH Planning Commission (SNHPC). He further informed the Board of the notice requirements for the cell tower on Wiley Hill Road.

**A. Sypek made a motion to accept Staff's determination that all four projects are not developments of regional impact.**

**R. Brideau seconded the motion.**

**The motion was granted, 7-0-0. The Chair voted in the affirmative.**

### **C. DISCUSSIONS WITH TOWN STAFF**

1. J. Vogl introduced to the Board the new recording secretary, Loren Thompson. The Board welcomed her.
2. 57 Rear Pettengill Road, Map 27, Lot 17-2 – J. Vogl reminded the Board that the site plan for this project was approved in October 2015, and the applicant is still waiting for a lease to be signed. J. Vogl informed the Board that the applicant did tweak the phasing line for phase one with a slight increase in the space being buildout resulting in a reduction in the buildout in phase two. J. Vogl stated that the material presented is for informational purposes only, and no further action is required by the Board. A representative of the project was present for any questions. The Board had none.
3. J. Vogl provided an update to the status of the Site Plan Regulation changes involving parking and loading. He stated that at an earlier meeting the Board approved zoning changes to the Site Plan Regulation regarding parking and loading, and that Town Council continued its public hearing until August 15, 2016.

## **II. Public Hearings/Workshops/Conceptual Discussions**

- A. Remi O. Fortin Realty Trust (Owner & Applicant), Map 17 Lot 7, 566-574 Mammoth Road, Zoned IND-II – Design Review – Non-binding review and discussion of a design review application for a subdivision of one lot into two.

Chairman Rugg read the matter into the record and advised the applicant and the public of the process.

Mike Hammer, Meridian Land Surveyor, 31 Old Nashua Road, Amherst, NH, presented for the applicant. M. Hammer informed the Board that the applicant has gone through the design review process, and was seeking guidance from the Board about the parking spaces in the front of the building at the northwest corner that fronts Mammoth Road. He reviewed the history of the property as a mixed use, grandfathered parcel. He stated dwelling at the southwest corner of the process was bequeathed by Remi Fortin to one of his sons. The Fortin Trust asked for M. Hammer's assistance to separate the dwelling from the industrial use to fulfill the terms of the will. He stated there are no changes to the lot but a new lot is being created internally. He stated that there was a typo regarding the frontage, and the correct amount of frontage, 150 feet, will be added to the plan. He stated that in early 2015 there was an insistence by the Town that the existing parking area in the front of the building be removed, loomed and reseeded before an approval would be recommended. He stated that the applicant hired an attorney to assist them. He stated that that part of the building has been in use and in existence since 1958, and the Mammoth Road was laid out in 1838. He

explained to the Board that it is difficult to ascertain the road's exact location, and it is a reasonable assertion that some of the parking spaces are located in the right of way. He informed the Board that Town staff indicated that if the applicant can prove that the parking spaces were in existence prior to 1963 then there may not be an issue. He stated that he, along with his attorney, provided to the Town and the Town's attorney documents indicating that the spaces were in existence since 1958. He felt that he was receiving conflicting statements from Town staff, and is here for guidance from the Board.

Chairman Rugg asked the Staff for input, and explained that some of the information presented needs to be established. J. Vogl stated that the applicant is in design review and requested this hearing, and that for the purposes of this meeting, Town Staff will treat the discussions as a conceptual review. He read for the Board some of the Planning and Economic Development's design review comments as follows: There appears to be improvements, including parking, located within the right of way of Mammoth Road. The Applicant should either 1) demonstrate that the parking is an existing non-conforming condition in place prior to the adoption of zoning in 1963; 2) bring the property into compliance with current zoning; or 3) obtain appropriate approvals to allow parking within the right-of-way.

Chairman Rugg stated that the age of the building needs to be determined. M. Hammer stated that in 1992 there was site plan that was approved by the Town with the parking spaces in existence and explained that at that time, the Planning Board signed it without a surveyor endorsing it. He stated that the lot line shown on that plan was derived from a court case where the applicant filed against the State of New Hampshire when Rockingham Road was being built. M. Hammer believes those lot lines are erroneous.

Attorney Patricia Panciocco, 740 Chestnut Street, Manchester, NH 03014, introduced herself, and presented the Board with a CD of pictures dating back to 1952 along with an enlarged compilation of pictures showing Morgan Linen on the site, some of which came from Washington. She stated that the Town attorney already has these documents. She reviewed the history of the Town's adoption of zoning ordinances, and pointed out that in 1966 off-site parking was established. From a legal perspective, she stated that Mammoth Road is an easement, the Town does not own the right-of-way in fee, and the public has the right to use the road but the dirt underneath is owned up to the center line by the abutters. She explained that the law of easements states that you still get to use your property as long as you do not unreasonably interfere with the easement rights of others. She stated that she has not heard from anyone that the parking is interfering with passage on Mammoth Road. Chairman Rugg asked if this was documented, and Attorney Panciocco stated she does not have that information. She stated that parking is not prohibited along Mammoth Road. She informed the Board that she sent a letter to Attorney Ramsdell in May and a letter to Kevin Smith in February explaining her client's position, and felt that she felt she met that burden imposed by the Town. She further stated that her client has the right to use that land as

long as there is no interference with travelling vehicles.

Chairman Rugg stated that it is hard to tell where the parking is on some of the photographs submitted. Attorney Panciocco stated that the site plans showing the parking spaces are on file with the Town and that the parking pre-dates zoning. She did not understand how the Town can require the removal of the parking spaces. She reiterated that there are no improvements to the lot, simply a line being drawn. Chairman Rugg asked for the original photo of Morgan Linen, and Attorney Panciocco stated she would try to get that for him. M. Hammer referenced a book, *Hard Road to Travel*, which he claimed contained relevant case law where this type of situation was called into question and discussed the viatic use of the right-of-way. He contended that unless there is interference with the use, there should be no issue. Attorney Panciocco explained that Mammoth Road is four rods wide with wider shoulders than what you typically find, and when Mammoth Road was laid out, the State paid damages for the right to travel and not for the right to park (there is no public parking there).

Chairman Rugg asked when the property was last surveyed. M. Hammer responded that the property was surveyed in November 2014, and the exact location of the right of way is indeterminable because when the road was laid out in 1838 the center line was marked using wooden stakes that do not exist anymore. He explained that determining the location of old roads is problematic primarily because of the use of stone walls and center lines of asphalts as markers. He believes that he is within a foot or two of the actual location but the exact location cannot be determined without court action.

J. Vogl responded that the boundary lines are unclear on the plan, and the question for the Board is whether the Board wants to sanction the private use of parking on a public right-of-way considering this application of standards to other properties in Town. Attorney Panciocco disagreed that there are other parcels in town with similar circumstances. She reviewed pictures from the CD that she presented to the Board (some from 1955). She stated that nothing was done intentionally. M. Hammer reviewed and explained the quality of the pictures presented as well as the shadows in the pictures. Attorney Panciocco encouraged the Board to speak with Attorney Ramsdell. She stated that there is a legal easement argument that the Town does not have exclusive jurisdiction. M. Hammer concurred, and stated that it is the Town's responsibility to maintain the viatic use of the easement for the benefit of the public. Attorney Panciocco spoke of requesting a waiver and the hardship to the applicant. Chairman Rugg stated that the initial determination is whether or not there was parking, and reminded the applicant of the process with Town Council. M. Hammer spoke of the road being a county right-of-way which has now defaulted to the Town. M. Hammer stated that the county laid out the road, and the documents proving this are in archives. He further described the road with a portion laid out by the Commonwealth Massachusetts and a portion by Hooksett terminating in Windham or possibly Salem.

Chairman Rugg asked for input from the Board. A. Sypek commented on the questions of whether there was gravel or grass outside of the building. L. Reilly asked about the status of the project. J. Vogl stated that it was in design review and L. Reilly questioned why the applicant acted like the matter was ignored. Attorney Panciocco stated that there are no complaints, and the hardship to the applicant. Attorney Panciocco stated that her clients first submitted plans in 2014 and received comments for the parking spaces to be removed, and the application was withdrawn. She referenced January 20, 2015 comments stated about removal of the parking spaces with no other available options. She stated that about a year later, the applicant wanted to move forward to fulfill the desire of the will, resubmitted plans for design review this year, and received additional comments about parking which prompted the desire for more guidance from the Planning Board. L. Reilly stated that there are other roads that are faced with similar circumstances where the Town maintains the road. M. Hammer referred back to a Hard Road to Travel, and talked about the viatic use, and discussed the concern of sanctioning some type of use. He believed that no precedent will be set in allowing the parking to remain given the unique circumstances of this property. M. Hammer stated that up until 2014, there were no complaints or issues with the parking, and contended that the Town is placing an undue hardship on the applicant to prove what has been there for a long time without complaint. L. Reilly stated that she felt there was a dispute over where the property lines are. M. Hammer disagreed, and thought that the boundary line issue was settled. Chairman Rugg stated that the Town attorney has a different opinion. Attorney Panciocco stated that it is a unique situation and explained the doctrine of nonconforming uses while citing statutory authority. She felt that they met the burden of proving that it was a preexisting nonconforming use. Chairman Rugg reviewed the dates or lack thereof of the pictures that were submitted which would require further review with the Town attorney. She stated that there are no changes being proposed to the property, and the Remi family is just looking to change the form of ownership. Chairman Rugg stated that further review is necessary to have a reasonable degree of certainty of the parking and its existence. Attorney Panciocco stated that all the site plans show the parking on the plans. J. Vogl stated that it is hard to determine what is parking and what is not. He stated there are other plans where the lines are drawn showing the parking spaces out of the right-of-way and on private property. The plans today are different and he stated that the turnaround time was well within the 30 days. Attorney Panciocco stated that she is not disputing that, and that there are abutters that could attest to what she is saying. G. Verani asked whether there was existing public parking and if there were any problems. Attorney Panciocco responded that there are no regulations saying that there cannot be public parking and informed the Board that the spaces are not in a paved area. M. Hammer stated that private utilities are maintained in the right-of-way which do not interfere with the Town's use, and the Courts have approved that use. M. Hammer stated that the change they are proposing is administrative with no changes to the property. Board members wanted to see the original pictures. R. Brideau asked about how the parking was situated, and safety issues with cars backing out on Mammoth Road. T. Combes asked if there were any issues with snow and there was none.

Chairman Rugg asked for public input. Abutter, Bob Merrill, 569 Mammoth Road, believed that the road is 66 2/3 feet wide (wider than normal), and stated that the original concrete was put down in 1920 not at center line (pavement does not follow the center line). His main concern was over the driveway, and he recommended that the line be changed. M. Hammer explained the reasoning of why the line is drawn as it is and the intent to avoid the ZBA process. B. Merrill spoke of the parking and the location of the road. He concluded by stating he was in support. There were no other comments.

Chairman Rugg stated that there were two things outstanding at this point: affidavits and original and dated photographs. Once submitted to the Town, the Town attorney will review. Attorney Panciocco stated that she is happy to provide whatever is necessary. M. Hammer thanked the Board for its time.

- B. Brandin Swisher (Applicant), Map 3 Lot 155, 48 Old Nashua Road, Zoned AR-I – Conceptual Discussion of a proposed 43 unit elderly housing development.

Chairman Rugg read the matter into the record, and noted that this was a conceptual discussion. Brandon Swisher, 15 Bear Meadow, and Doug MacGuire with The DuBay Group, engineer on the project presented the project to the Board. D. Macquire described the 16 acre parcel off of Old Nashua Road as open field with an existing family farm with a detached barn, mostly flat with a wetland area, possibly manmade. He stated that the project is a 43 unit elderly condominium development. B. Swisher described the property as a large meadow. He described the road development, drainage, and demand for 55 plus communities. His hope is to make it more affordable without a club house. He informed the Board that he owns a landscaping company, and is experienced with the development of these types of communities, and the advantages and disadvantages of having a club house. A major feature of the development will be landscaping and the streamlining of costs. He spoke of the density aspect and they are not pushing to maximizing the number of units. He spoke of the open space requirements and the layout of the land. D. Macquire spoke of the ordinance and the requirements. He spoke to the allowed density of 115 units maximum based on 8 units per acre. He stated that 8 septic fields would handle this development. He stated that the project exceeds the 40% open space requirement. He thought it would be appropriate to bring the project before the Board. Chairman Rugg asked Staff for input.

J. Vogl stated that there is a cap on elderly housing units, and Londonderry has a way to go before it reaches that cap. He recognized the commitment to landscaping and design. R. Brideau pointed out that there is another development with a similar name. B. Swisher stated that the footprint is 32x40 with a two car garage but those figures are not set. G. Verani asked about the length of the cul-de-sac, and was informed that the overall length is approximately 1500 feet but there is a secondary loop. He stated that there will be sidewalks. There was a

discussion about a walking experience and the natural features. L. Reilly expressed concern over the affordability for Londonderry residents, and appreciated the applicant's concerns over cost. A. Sypek asked about snow storage, and was informed that the calculation for it is still being developed. B. Swisher stated that the pond looks like it was dug so it would intersect the water table (pond is permanent). B. Swisher estimated that the pond was 8000 square feet in size. There was discussion about the trails that lead to the pond and the homeowner's awareness of those trails. B. Swisher stated that in the next month or two there should be a formal submission, and thanked the Board for its time.

- C. Public Workshop – Staff recommendations for amendments to Site Plan Regulations to improve the approval process for small developments including updates to the Minor Site Plan, Administrative Review, Design Review, Storm Drain System, Traffic Impact Analysis, and Site Plan Application and Checklist sections

J. Vogl reviewed his presentation (attached) for the Site Plan amendments and the Board offered comments and changes. J. Vogl stated that one of the goals is to make the regulations more business friendly, more flexible and responsive to the demands of the public.

After J. Vogl's presentation, the Planning Board offered the following changes and/or comments to the Site Plan regulations:

1. Page 15 of 60 paragraph d - change ARC to MSPRC;
2. Page 16 of 60 paragraph ii – there was concern over the flow of the sentences;
3. Page 26 of 60 paragraph 4 – there was concern over the flow of the sentence – suggestion was to add "by means of" in front of the word "curbing";
4. Page 29 of 60 – paragraph a – add mention of Heritage Commission/ "Londonderry Look Book";
5. Page 56 of 60 – paragraph vi – change "12 month" to "24 month" to match paragraph 7.06.d.1.i; and
6. The final concern was with the use of the words regarding lighting (neon, artificial, LED lighting). J. Vogl stated he would find a more up to date industry standard term.

J. Vogl expressed that most of these amendments responded to direct board actions over the years, and were essentially codifying the recent trends and demands from the development community. Members expressed general support for the amendments, particularly the updates to the minor site plan process, and appreciation for all the hard work that the project entailed. Chairman Rugg asked for public input and there was none. He stated that this matter would be scheduled for a public hearing on August 10, 2016.

**ADJOURNMENT:**

**R. Brideau made a motion to adjourn the meeting. Seconded by L. Reilly. Motion was granted, 7-0-0. The Chair voted in the affirmative.**

The meeting adjourned.

These minutes were prepared by Associate Planner (TEMP) Laura Gandia.

Respectfully Submitted,

  
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Arthur Rugg, Chair

These minutes were accepted and approved on August 3, 2016 by a motion made by R. Brideau and seconded by T. Combes.





CONCEPTUAL SITE PLAN

**THE MEADOWS OF LONDONDERRY**  
 TAX MAP 3, LOT 155  
 48 OLD NASHUA ROAD  
 LONDONDERRY, NEW HAMPSHIRE  
 PREPARED FOR:  
 BRANDIN SWISHER  
 140 ROCKINGHAM ROAD  
 AUBURN, NH 03032

SCALE: 1"=50'  
 DATE: JUNE 29, 2018

Drawn By: MCA  
 Checked By: GCM  
 Project No.: 18-001  
 File: SEPLAN-COLOR

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