



Minutes

NORTH HAMPTON PLANNING BOARD Regular Meeting April 5, 2005

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These minutes were prepared as a reasonable summary of the essential content of this meeting, not as a transcription. An audio recording of the meeting is available in the Town Office. In the event that a question arises about verbatim comments, it can be answered by listening to the recording.

Present: (1) Phil Wilson, Chair; (2) Shep Kroner, Vice Chair; (3) Jon Rineman, Selectperson Representative; (4) Craig Salomon; (5) Judy Day; (6) Laurel Pohl; (7) Ron Todd seated for Joseph Arena.

Members Absent: (1) Joseph Arena

In Attendance: (1) Jill Robinson, Circuit Rider/RPC, (2) Krystina Deren Arrain, Recording Secretary / Planning & Zoning Administrator

Chairman Wilson convened the meeting at 7:02 PM and presented an overview of the meeting agenda.

Old Business

Case #04-31 -- Map/Lot #007-124-000: 72 Lafayette Road, Kane Company, Inc./Ken Linseman, 210 Commerce Way, Suite 100, Portsmouth, NH 03801. Site Plan Review for Rite Aid Pharmacy, a retail business. This meeting is a continuation of the February 1, 2005 session.

Ken Linseman, Developer, Kane Company, Portsmouth, NH
Atty. Malcolm McNeill, McNeill, Taylor & Gallo, Dover, NH
John Schmitz, Civil Engineer, B& L Companies, Meriden, CT
Fred Greenberg, Traffic Engineer, B& L Companies, Meriden, CT
Robert Phillips, Traffic Engineer, Keach Nordstrom Associates, Bedford, NH
Edward S. Kelly, Town Engineer/ Keach Nordstrom Associates, Bedford, NH

Atty. McNeil reviewed the March 30, 2005 KNA report and addressed the ARC report comments. He remarked that the dimensional requirements of the site had been resolved by the ZBA actions. Mr. Schmitz distributed a Feb 4, 2005 letter that addressed exterior materials as well as color depictions of the exterior materials. He reviewed the color selections on the architectural renderings plan that he displayed on an easel. Mr. Schmitz noted that the overhang eave on the northwest corner projected into the setback. He asked how the Board wanted this issue resolved – whether it required a variance or whether the Board would accept the infringement. Discussion ensued among the Board regarding whether to interpret the overhang as an extension of the footprint dimensions. The applicant stated that he did not want to seek a variance over this issue. Ms. Robinson thought a waiver would be appropriate. Mr. Wilson thought the overhang contradicted the zoning ordinance and asked John Anthony Simmons for an opinion. Mr. Simmons stated that he felt it would be a Building Inspection decision and if it

went to the ZBA he would not sit on the case and thus could not offer any opinion. Mr. Salomon stated that he believed the overhang was part of the structure.

Ms. Robinson read the definition of “structure” from the zoning ordinance definitions:

“Anything constructed or erected, the use of which requires a fixed location on the ground or an attachment to something having fixed location on the ground, including, in addition to buildings, billboards, carports, porches, and other building features but not including sidewalks, drives, fences and patios.”

Mr. Salomon moved and Ms. Pohl seconded the motion to accept as presented the addition of the colors and specification of materials of the plan but that the overhang would not be intended to set a precedent.

The vote was 0-6 with Mr. Salomon abstaining. The motion failed.

Mr. Salomon asked the applicant to provide a Certificate of Trustee Authority. Mr. Linseman affirmed that he would provide the certificate. Mr. Todd questioned the easements and inquired if the town attorney should review the easement documents to determine if the town is at risk. Atty. McNeil said the town is not at any risk – the easements just burden any current or future property owners. Mr. Salomon suggested that a permanent easement stipulation should be included in any condition of approval.

Ms. Robinson questioned if the adjoining lot was a non-conforming lot and if any easements would make it more non-conforming. Mr. Wilson commented that the adjoining lot in question was a non-conforming lot of 0.8 acres. Discussion ensued about a potential issue that future driveway access should include the adjoining non-conforming lot. Atty. McNeil addressed the issue that future development was a question that should not be addressed at this time, but rather that the applicant had presented the safest driveway design. Mr. Wilson said that he believed that the applicant’s having submitted a plan that included an easement across the abutting lot “opened the door” to the Planning Board’s questions about the impact of the easement on future site plans proposed for the abutting lot. He added that he was concerned about best management practices for driveway access to sites like the one under consideration and the abutting lot. Such practices, he believed, would call for one driveway at the northeasterly corner of the abutting lot to serve both sites because of the limited frontage on Lafayette Road and proximity to the intersection of Lafayette Road and Atlantic Avenue. Ms. Robinson concurred with this opinion. By approving the proposed easement for the Rite Aid site, Mr. Wilson therefore concluded that the current Planning Board would be limiting the ability of future Planning Boards to require the safest access arrangement for the two sites. Mr. Wilson also remarked that the language of the easement was questionable, that the easement definitely reduced the usable space for future development of the abutting lot, and that the proposed easement also introduced the possibility of future risk to the town because of constraints the easement placed on the latitude of future Planning Boards with respect to any proposed plans for the abutting lot. Mr. Wilson commented that a condition of approval could include the town attorney’s opinion that the easement as written would not put the town at risk. Mr. Salomon said that he did not believe that such a condition would be possible under applicable law, but that a condition requiring an opinion from

the Town Attorney that the proposed easements are legal and accomplish their stated goal and that they are not detrimental to the Town's interest would be possible. Mr. Salomon commented that the risk of future development would be on the owner of the adjoining lot.

Traffic Impact Study [updated version issued the day of the sitewalk]

Mr. Phillips reviewed the study and made comments stating that the applicant addressed most their concerns in the updated report. Ms. Robinson asked for the status of the Route 1 study.

Mr. Kroner noted that the study would probably not be available for another year and the addition of a southbound lane, from his opinion, should not be expected for another 10 years.

Fred Greenberg, who conducted the traffic study, provided his input and stated that his findings confirmed that current traffic flow and future traffic flow would be better. Discussion ensued about whether the intersection was in failure. Mr. Greenberg commented that according to his updated study figures, the intersection was not in failure. Mr. Kroner inquired if there was enough sight distance from the west when turning left onto Atlantic Avenue from the Atlantic Avenue driveway. The discussions related to the fact that sight distance was partially encumbered and certain modifications were preferred as noted in the traffic study. Truck deliveries were discussed: The applicant stated that a delivery was scheduled for once a week for large trucks from Rite Aid and once a week for smaller trucks delivering sodas and other items from other suppliers. Mr. Kelly suggested that a site distance profile should be completed for the Atlantic Avenue access driveway that demonstrated that the all-season site distance standard, as defined in the NH-DOT publication, would be met by proposed modifications.

Phase I Environmental Assessment

Mr. Schmitz provided and distributed a report for the town record of (1) groundwater sampling and (2) hazardous material sampling.

Mr. Wilson opened the public hearing for comments at 8:02 PM.

Cynthia Swank, Hobbs Road, commented that she is a walker and requested that a pedestrian walk signal should be installed. Mr. Rineman noted that he understood the applicant would install a crosswalk that was under the purview and control of the NH-DOT. He asked that the Board recommend its preference for a crosswalk on the site to the NH-DOT. Don Gould, 21 Fern Road, speaking as a citizen, stated that he was impressed with the applicant's level of expertise from the team professionals making presentations. He supported the enhancement of the improvement of the corner and asked that the Board consider the benefit of the increased taxable value of this project.

Mr. Wilson closed the public hearing comments at 8:48 PM.

Mr. Salomon moved and Ms. Day seconded the motion to approve the application with the following conditions:

1. **Recordable Mylar.** Applicant shall submit a recordable Mylar of the approved plan with signatures and seals affixed of all licensed professionals whose names appear on the plan.
2. **Certificate of Monumentation.** The applicant shall provide the Board with a Certificate of Monumentation, stamped and signed by a NH LLS, certifying that all monuments depicted on the plan have been properly set.
3. **State Permits.** Applicant shall submit evidence of receipt of all required federal, state and local permits, including but not limited to septic and driveway, and shall note their numbers, as appropriate, on the plan.
4. **Surety** – Applicant shall post surety in a form and amount acceptable to the Town of North Hampton for the following:
 - a. **Landscaping.** An amount equal to 25% of the installed cost of all plantings to be held by the Town for two (2) growing seasons following completion of construction to ensure prompt replacement of any dead plantings. The Construction Inspector from the Town's engineering consulting firm shall inspect site landscaping annually and recommend reduction of the amount of surety held, as appropriate.
 - b. **Site Work.** An amount sufficient to cover costs of construction and installation of landscaping and improvements, including but not limited to costs associated with construction of access driveways and improvements, installation of signage at the Lafayette Road and Atlantic Avenue driveways, appropriate disposal of the lead-based paint and mercury switch upon demolition, and installation of walk signalization at the Lafayette Road and Atlantic Avenue intersection, if approved by NH DOT within six (6) years of the issuance of a Certificate of Occupancy.
5. **Certificate of Trustee Authority.** Applicant shall submit Certificates of Trustee Authority for all easements submitted in conjunction with the approved plan where such easements are granted by a Trust.
6. **Sight Distance Profile.** Applicant shall note on the plan that modifications at or near the Atlantic Avenue access driveway shall be performed in a manner that brings that access driveway into conformity with the all-season sight distance standards of NH DOT.
7. **Signage at Lafayette Road Access Driveway.** Applicant shall note on the plan that the access driveway located at the northeast corner of the site shall have the following signs: A "No Left Turn" sign from the site on to Lafayette Road and a "Do Not Enter" sign on the reverse side of the "No Left Turn Sign."
8. **Dumpster Screening.** Applicant shall replace the fencing to screen the dumpster on the proposed plan with stockade fencing.
9. **Walk Signal Installation.** Applicant shall submit in writing agreement to install at his expense walk signals at the Lafayette Road-Atlantic Avenue intersection, if approved by NH-DOT within six (6) years of the issuance of a Certificate of Occupancy.
10. **Deliveries.** Applicant shall add a note to the plan specifying that deliveries made by Rite Aid trucks shall be restricted to once per week during non-business hours, to the extent practicable.

11. **Materials Specifications.** – Applicant shall add specifications of colors and materials, -- including signs, roofing, siding, trim, brickwork, windows and doors -- on architectural renderings submitted with the plan.
12. **Landscaping to Restrict Access from the Northerly Abutting Lot.** –Applicant shall add a note to the plan indicating that appropriate and adequate landscaping shall be planted in the access easement on Lafayette Road to restrict access to the site from the northerly abutting lot.
13. **Easements.**
 - a. Applicant shall add language to all easements stating that the easements may not be modified without approval of the Planning Board.
 - b. Approval is conditioned upon the Planning Board's receiving a written opinion from the Town Attorney that the proposed easements are legal and accomplish their stated goal and that they are not detrimental to the Town's interest.

The vote was 7-0 (unanimous).

Mr. Salomon moved and Ms. Pohl seconded the motion to request that the Board of Selectmen forward a request that the NH-DOT authorize a walk signal at the intersection of Atlantic Avenue and Lafayette Road/Rte 1.

The vote was unanimous (7-0).

Mr. Wilson recessed the meeting at 9:07 PM.

Mr. Wilson reconvened the meeting at 9:15 PM.

Case #05-03 -- Map/Lot #016-012-000/021-007-000/017-088,089,090,091-000: 203 Lafayette Road, Crown Properties & Home Sales, LLC/Joseph Roy, P.O. Box 1627, North Hampton, NH 03862. Proposal for a subdivision to develop a six (6)-lot Adult Manufactured Housing Park adjacent to an existing housing park. This is a re-application from a recent submission.

Atty. John Bosen, Bosen & Springer PLLC, Portsmouth, NH

John Chagnon, Ambit Engineering, Portsmouth, NH

Joe Roy, Crown Properties and Home Sales, Principal, North Hampton, NH

Mr. Wilson remarked that Joe Fitzgerald had not been legally notified as an abutter for the March 1, 2005 meeting in which the Board accepted jurisdiction for the case. Atty. Bosen noted that the abutter must demonstrate material loss and prejudice to the ZBA. Atty. Bosen stated that Mr. Fitzgerald must file a motion to vacate. He requested that the Board move forward on their application until the ZBA decided upon the variance issue. Mr. Wilson asked Ms. Robinson if the Board should move forward. Ms. Robinson remarked that the Board could move forward and review other issues and address the variance issue later. Mr. Salomon was concerned that the Board process could be flawed since there was a question surrounding the ZBA variance decision as well as our own. He suggested postponing action on the application for another month. Atty. Bosen stated that the applicant preferred to move forward at this meeting and address some of the engineering issues. Mr. Wilson commented that the town engineer had not received an engineering update from the applicant in time to prepare a review for the Board. As

a result, Mr. Wilson added that the Board could not proceed in reviewing any engineering issues. Atty. Bosen requested that the Board table the discussion until the May 2005 meeting.

Mr. Salomon moved and Ms. Day seconded the motion to table the application until the May 2005 meeting contingent upon the applicant's representation that the 60-day extension was waived.

The vote was unanimous (7-0).

New Business

Case #05-04 -- Map/Lot #007-053-000: 33-49 Lafayette Road, (I-B/R Zone District) W/S North Hampton Properties Inc., 1330 Boylston Street, Chestnut Hill, MA 02467. Change of Use Application to operate a "Quiznos" Restaurant.

Atty Bernard Pelech, represented the applicant and property owner.
Jonathan Gozzo, Quiznos' Manager/Franchisee

Mr. Wilson noted from the ARC comments that the Board needed septic information. Atty Pelech submitted a memo dated March 18, 2005 from NH Soil Consultants addressing the septic system issues. He affirmed that there was adequate septic capacity for the applicant's use. Mr. Gozzo noted that the hours of operation would be 10 AM to 9 PM. Atty. Pelech added that the applicant intended to meet the current signage requirement. The Board asked if the signage would meet the dark sky standard. Atty. Pelech said the internally lit signage could be replaced with a sign with downward lighting and thus could meet the dark sky standard. Ms. Robinson remarked that she did not receive any of the Quiznos' material. Atty Pelech answered Mr. Kroner's question that the applicant's location was connected to the old mall's septic system.

Mr. Todd moved and Mr. Rineman seconded the motion to approve the change of use application with the condition that the signage meets the dark sky standard.

The vote was unanimous (7-0).

Mr. Kroner moved and Ms. Pohl seconded the motion to accept new business after 9:30 PM.

The vote was unanimous (7-0).

Case #05-05 -- Map/Lot #017-095-000: 183 Lafayette Road, (I-B/R Zone District) Mohamad Shaikh, 183 Lafayette Road, North Hampton, NH 03862. Site Plan Review for residential unit expansion [Pine Haven Motel].

Mohammed Shaikh, Owner
Adeel Shaikh, Manager

Mr. Wilson said that the first question with respect to this application was whether it was appropriate for this application to be considered as a site plan review. Mr. Shaikh said that the expansion is for a bedroom for his infant son. The applicant affirmed that no kitchen or bathroom facilities were being added and that the new bedroom would be built on an existing concrete pad.

Mr. Kroner moved and Mr. Salomon seconded the motion that no site plan was required.
The vote was unanimous (7-0).

The Board decided to refund the site plan review fees less the fee for notifying abutters. Ms. Arrain noted that the town records did not include a recorded site or subdivision plan. Ms. Arrain remarked that she would verify if the Fitzgerald subdivision was recorded. Mr. Wilson commented that before a Certificate of Occupancy (COO) was issued, a recorded subdivision plat must be recorded.

Mr. Salomon moved and Ms. Day seconded the motion that prior to the issuance of a COO, a recordable mylar of the subdivision plan for Joseph Fitzgerald/Pine Haven Motel must be recorded at the Registry of Deeds.
The vote was unanimous (7-0).

Case #05-06 -- Map/Lot #020-008/009/011-000 and 021-001-000: 223 Lafayette Road, P. D. Associates, LLC, 5 Dartmouth Drive, Suite #101, Auburn, NH 03032. Request for Site Work Bond Recommendation for Greystone Village Retirement Community.

Elmer Pease, P.D. Associates, Auburn, NH
Atty John Allen, John Allen & Associates Law Office, Manchester, NH
Joe Cataldo, GFI North Hampton Construction, Boston, MA
John Chagnon, Ambit Engineering, Portsmouth, NH

The town engineer, Jeff Clifford, provided a review of the performance bond, which was distributed to the Board at beginning of the meeting. The applicant agreed to Mr. Clifford's suggestion for a bond amount. Atty. Allen suggested that bond amounts could be adjusted at each phase of the project proposing that the town engineer review each phase. Mr. Cataldo explained the Phase process and the reason behind it to the Board. He remarked that rather than disturbing the entire lot with the disruption of construction, the applicant decided to proceed with development in a three-phase process.

Mr. Todd inquired if all the site work would be completed all at once or would it be completed in phases. Mr. Cataldo said all the site work and the drainage issues would be completed in Phase I. Ms. Robinson asked if there were any dates associated with the phases. Mr. Cataldo stated that they were anticipating a 2-year project. Mr. Cataldo expected it to be completed by the end of 2006. Discussion ensued about the details of the format of the bond presentation. The Board preferred that the bond financial statement be presented by phase rather than one entire amount. The applicant would provide updated information by April 9, 2005 as well as the tri-party agreement. The Board would consider their proposal at the April 18, 2005 work session.

Other Business

Greystone Village – Voluntary Lot Merger

Mr. Salomon moved and Mr. Kroner seconded the motion to approve the voluntary lot merger.

The vote was unanimous (7-0).

Public Hearing

Public Hearing about a proposal to amend the Planning Board's Rules of Procedure to move the regular monthly meeting day from the first Tuesday of each month to the first Monday of each month.

Mr. Wilson opened the public hearing for comments. No one was in attendance, but Mr. Wilson remarked that when the question was posed at an earlier time, there was no input.

Mr. Kroner moved and Mr. Rineman seconded the motion to schedule regular meetings on the first Monday of the month at 6:30 PM and work sessions at 6:30 PM beginning on April 18, 2005 meeting.

The vote was unanimous (7-0).

Adjournment

Mr. Rineman moved and Ms. Pohl seconded the motion to adjourn.

The vote was unanimous (7-0).

The meeting adjourned at 10:37 PM.

Respectfully submitted,

Krystina Deren Arrain
Recording Secretary / Planning & Zoning Administrator