



PLANNING BOARD
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MINUTES OF THE PLANNING BOARD

Thursday, August 19, 2021 – 6:30 p.m. – Virtual via Zoom

Members Present: Bob Dion, Stu Gerome, Steve Gerrato, John McDevitt, Catie Medeiros, Steve Smith (Selectmen's Rep)

Members Absent: David Moore, Frank Catapano (Alternate)

Staff Present: Mark Fougere

Co-Chair Gerrato opened the Planning Board public hearing at 6:33 p.m. Attendance of Planning Board members was taken by roll call: B. Dion – present, S. Gerome – present, J. McDevitt – present, C. Medeiros – present, S. Smith – present, S. Gerrato – present. A quorum was present and the meeting was being recorded.

S. Gerrato, addressing the Board, stated that they lose sight of the way they do things. The Planning Board works for the residents and are there at their discretion. The Board makes rules and regulations and has meetings; the public meeting is sent on to the Town Meeting and gets voted on.

1. Projects of Regional Impact

There were no projects of regional impact to discuss.

2. Subdivision of Land: 529 Portsmouth Avenue (Map U5, 9 – Commercial A Zone)

Owner/Applicant: Granite State Pioneer Group, LLC

The owner/applicant is proposing to convert the existing duplex into a condex.

MOTION: J. McDevitt moved to accept the application for the Subdivision of Land, 529 Portsmouth Avenue (Map U5, 9) as complete. Second – S. Gerome; all in favor. MOTION CARRIED

Jeff Apsey, owner/applicant, addressed the Board. His project had been before the Board as a Preliminary Conceptual Consultation on Thursday, February 18, 2021 and Thursday, May 20, 2021. The building is very close to the road; the porch is almost on the sidewalk. J. Apsey is trying to make the building similar to existing homes and be back from the road. It will be made more conforming by pushing the building back. The proposed structure will be a two-unit condex and not exceed the footprint. There is an existing septic field. The lot is smaller than the requirements for a two-unit home but will be 'grandfathered' based on the current home being two units. The garage has been removed. At the request of the Board, a wetlands survey has been done. Elevations for the culvert were included. There is a drainpipe from the wet area.

J. Apsey reviewed the proposed site plan. Test pits have been done. The existing pipe went from a concrete culvert into a dilapidated manhole. J. Apsey noted the location of another pipe which is 10

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inches in diameter. Eric Weinrieb, Altus Engineering, looked at the pipes and recommended putting one new culvert on the plan from the wet area to the manhole. They would abandon the old culvert, the manhole, and the old pipe. There will be a new pipe. It does not serve as a drain for the wetlands, it is an overflow. During a huge event, that pipe would fill and drain across the road. S. Smith added that E. Weinrieb determined that the Town owns up to where it connects to the catch basin. The rest is J. Apsey's responsibility to maintain the drainage. S. Smith was concerned that the pipe will be higher than necessary without some kind of 'finagling'.

There was a discussion about the elevation of the culvert and catch basin. It was noted that there is a 1.6 ft. difference between the existing water level and bottom of the catch basin. It would still be below the grade and there would be a headwall and riprap installed. Where the wetland has to be restored, J. Apsey will do riprap. He is trying to restore it so it functions properly. The ideal situation would be to lower the culvert under the road, which would be a huge and expensive project. The topo of the culvert on the opposite side of the road was discussed. M. Fougere stated it was a catch basin and a pipe that parallels Fish and Game Road and daylights.

J. McDevitt stated he would like to have a review from Altus Engineering. S. Gerome added that E. Weinrieb should design what they wanted to do. J. McDevitt stated if E. Weinrieb was fine with it, he would be fine with it. S. Gerome stated the Board needed E. Weinrieb's blessing on the elevation of anything mechanical on the plan. J. Apsey will send the plan to Altus Engineering for review.

J. McDevitt stated the Planning Board was going to add a Village District and the location of the proposed house would be included. S. Gerome stated the Village District Committee has not determined architectural requirements. J. McDevitt added that all other houses in the proposed District were clapboard or cedar shingles; the siding on the planned house was board and batten. That design does not fit in the area. M. Fougere, responding to a question from S. Gerome, stated a non-conforming structure could be moved but could not be made worse. The house was being moved away from the street.

M. Fougere reiterated the plan required the following additional details: show the parking area, wetlands and survey stamps, and bounds should be set; plan set should include the dividing walls, interior design on the recording sheet and proposed plan, and the Limited Common Area needs to be defined on the rear of the property (what areas will be owned in common).

J. Apsey noted the septic tanks will be moved to the uplands. He is trying to get anything mechanical moved away from the wet areas. A gravity leach field is planned. The existing system has been inspected and the chambers are good; there are a couple of repairs that need to be made. An application to do the culvert will have to be submitted to DES.

S. Smith questioned who had responsibility for the picket fence along Cemetery Lane. J. Apsey stated the fence would be replaced and noted on the plan. M. Fougere suggested post and rail.

The hearing was opened to public comments. There being none, the public hearing was closed. S. Gerrato commented that he would like the water to disappear.

MOTION: J. McDevitt moved to continue the Subdivision of Land, 529 Portsmouth Avenue, to the public hearing on Thursday, September 16, 2021. Second – S. Gerome; all in favor. MOTION CARRIED

3. Boundary Line Adjustment: 278 Ocean Road (Map R20, 5 – RCIM Mixed-Use District)

Owner: Daniel J. Donahue, Trustee - Donahue Realty Trust

Applicant: Kathi Mann, Trustee – Donahue Realty Trust

The owner and applicant are requesting an amendment of the Conditions of Approval for the Boundary Line Adjustment granted in January 2021.

Alec McEachern, Attorney – Shaines and McEachern and representing the applicant, addressed the Board. They were before the Board for the removal of a Condition of Approval granted in January 2021 for a boundary line at 278 Ocean Road. That condition restricts the use of the driveway, which is an easement.

Attorney McEachern reviewed the Boundary Line Adjustment from January 2021. Boise Cascade leases the rear of the property which is owned by Donahue Realty Trust and located in Greenland. The front of the property is located in Portsmouth. Boise Cascade uses the property for storage of materials which are brought in using the existing driveway. A house is being built on the front lot. The lot line was moved closer to Ocean Road.

When the lot line adjustment was done in January 2021, John Chagnon (Ambit Engineering) was unaware that Boise Cascade had lease rights to accessing Ocean Road. The aerial shot provided to the Board shows the Boise Cascade warehouse in a corner of the lot. Vehicle access is problematic. There is now a legal issue with Boise Cascade and Donahue Realty Trust as a result of the boundary line adjustment. They are requesting that the Board remove the restriction of 'emergency access only'.

At the January 2021 meeting, a Planning Board member felt it would appropriate to make the road beside the house as emergency access only due to the proximity of the house as well as preserve the property value for the homeowner. Boise Cascade has a legal right to access the lot from Ocean Road. The house will be sold with the burden of the easement on the road used to reach the industrial property of Boise Cascade.

Attorney McEachern stated the restriction was harmful to the Greenland property which is zoned 'Industrial' and impact its use. The Board should strive to protect the industrial uses in the Industrial Zone by removing the restriction. The individual buying the house will know there is an easement and trucks will be accessing that drive. They will buy with full knowledge of that condition.

The restriction was not noted on the plan; it was not required to be on the plan. It appears on the Notice of Decision from January 21, 2021. The restriction reads: 'Applicant shall submit an access easement for review by staff, detailing that the easement will allow for emergency access only to the rear lot.' They are requesting that condition of approval be stricken. Changing the plan will not be required. Attorney McEachern will prepare a deed to be reviewed by M. Fougere.

This application did not need to be accepted as complete. The application was to amend the Conditions of Approval and not to change the plan.

Attorney McEachern has reviewed the Boise Cascade lease which expires December 31, 2027. There is a five-year extension period. C. Medeiros stated it should not be a major issue if the home buyer was aware. Attorney McEachern will be preparing the deed for the purchase of the house and will specifically highlight that condition. Anyone looking at the house will be informed.

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Materials are brought in and taken out by truck. The access drive is used as a 'lay down area'. The access drive is the way into the rear of the property. There is a main drive off Ocean Road to the office building. A tractor trailer has a difficult time making the turn around the building. They would like to use the 'second' access road to the lay down area.

S. Smith clarified that he brought the emergency access to the Board's attention. He was unsure how the area was going to be used when the lots were discussed. He was concerned about tractor-trailers and the backup of traffic going in and out. It will be more of a Portsmouth issue since they are backing up through Portsmouth onto Ocean Road. S. Smith had heard there would be a second house on the other lot and had concerns with trucks using the access drive.

S. Gerome asked about the abutter at 272 Ocean Road. Attorney McEachern stated the tractor-trailers have been using the access drive for a period of time. The new plan has not been recorded and the note referring to the access drive is not on the plan. The abutter would not be aware of the restriction unless they attended the meeting or requested a copy of the Notice of Decision. A certified letter was sent to abutters. M. Fougere noted that the condition has been in place for a number of years. Boise Cascade's lease, with a five-year extension, expires in December 2032.

S. Gerrato opened the hearing to public comments. There being none, he closed the public hearing and returned to the Board for further discussion.

MOTION: B. Dion moved to remove Item 3, Applicant shall submit an access easement for review by staff, detailing that the easement will allow for emergency access only to the rear lot, from the approval granted on January 21, 2021, for the property located at 278 Ocean Road (Map R20, 5). Second – S. Gerome; all in favor. MOTION CARRIED

4. Site Plan Review, Conditional Use Permit: 309 Portsmouth Avenue (Map R21, 65 – RCIM Mixed-Use District)

Owner/Applicant: SKA Properties 11, LLC – Sheree K. Allen

The owner/applicant is proposing to add a parking display area ancillary to the existing automobile dealership.

S. Gerrato recused himself, explaining that he voted against this case at the Zoning Board of Adjustment meeting. He did not want the wetlands impacted. Co-Chair Gerome chaired this case.

Steve Haight, CivilWorks and representing the applicant, addressed the Board. Also present was Sheree Allen, owner/applicant. The lot is located next to the existing Mercedes dealership. A design for a Cadillac dealership was approved over ten years ago. They would like to re-establish the footprint that was approved but not include the building; the use would be a display area for the Mercedes dealership. The wetlands have been re-delineated and the topography updated for the site. They were granted a Special Exception by the Zoning Board of Adjustment in May 2021.

All of the proposed paved area will be captured in the underground treatment system. There will also be infiltration and treatment; there will be no impacts to off-site flows. The Special Exception will allow for some of the wetlands to be filled in at the front. The footprint previously approved has been slightly reduced. Test pits and borings have been done. There are fairly significant trees along the front of the property that will not be disturbed. Additional landscaping is planned.

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Comments from M. Fougere were discussed. He had suggested access across from the building (S. Haight pointed out the building and front access on the plan) for people to be able to see the cars. A sidewalk will be added. Parking along the road and off-loading of vehicles was discussed at the ZBA. Signs have been put up along Portsmouth Avenue. Any vehicles being dropped off or picked up will be on the site. There is an update to the NHDOT permit for the site. A wetlands permit and septic permit will be submitted. The site has been prepped in case they want to add a building in the future; there will be utilities to the site. If a building was put on the site, an updated site plan would be submitted to the Planning Board. The leach field has been submitted to the Town and approved; it is pending at the State. Portsmouth needs to approve the water connection.

MOTION: J. McDevitt moved to accept the application for Site Plan Review and Conditional Use Permit, 309 Portsmouth Avenue (Map R21, 65) as complete. Second – B. Dion; all in favor. MOTION CARRIED

Parking spaces were discussed. M. Fougere explained that it is a display area; parking is normally tighter in a display area. It is not a parking lot where a specific number of spaces are required per thousand square feet. Display areas are not defined in the Ordinance. M. Fougere further explained that a building would require parking of a specific size; the display area is not parking for employees or guests. S. Haight clarified it was a display area because there is enough room for 140 spaces. There is no square footage requirement because there is no building. Mercedes will be displaying their vehicles on the lot. Delivery or pick up of vehicles would be done on this lot. C. Medeiros stated that it needed to be better defined. S. Haight clarified that the display lot would be used for passenger vehicles being sold by Mercedes.

There is no signage proposed on the site at this time. The original plan that was approved included a pylon sign. They would prefer to have a sign and plan to discuss with the Board before including it on the site plan.

J. McDevitt noted there was significant drainage and erosion, adding he would want an in-depth review. S. Haight responded they would be contacting Altus Engineering for a full review. S. Haight explained that the entire paved area would be captured by catch basins directed into an underground detention system. It will then go into another system inside the first row of chambers and dissipate into the remaining chambers as well as leaching into the ground. Any overflow will go into an overflow pipe. Test pits, borings, and infiltration feasibility reports have been done. The system has been sized for the 25 and 50-year storm event. Everything on the site is being treated. M. Fougere added this was a very common approach on commercial sites and will be reviewed by Altus Engineering.

B. Dion questioned where the water would go after being treated. Currently, the water flows towards Rt. 33, which is the front of the lot, and into the culvert under Rt. 33. It will maintain the same drainage swale. Vehicles will be parked over the treatment center. M. Fougere noted it was a very fancy underground septic system. B. Dion asked if it could be done without impacting the wetlands. S. Haight responded that based on the number of spaces that are needed, the plan has been reduced as much as possible to minimize the impact. B. Dion asked if it would be viable project if they were not allowed to impact the wetlands. S. Haight responded 'no'. Part of the system design was for the setback from the wetlands. The Special Exception allowed them to put the area in the setback. If the wetlands encroach, they may lose half of the parking area. The proposed treatment system is just north of the wetland area. The wetland buffer is approximately one-third of the parking area, which means more than a third is lost. 140 parking spaces would mean losing 40 to 50 spaces. It would diminish not only the parking area but the available area to add a building. It is a commercial lot.

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S. Smith, personally, did not like the plan. He did not like that Greenland was turning into Stratham with used car lots. He felt it was an over-reach with the use of the property and was too big. He acknowledged that it was approved in the past but going forward in this day and age, and considering the letter received from an abutter, needed to be taken into consideration. He thanked the applicant for the signs about off-loading vehicles on the side of Portsmouth Avenue. S. Smith also felt that more access would not be good for that stretch of road due to the curve and hook. Adjustments for trucks entering and exiting without disrupting traffic would be preferred. In his opinion, another curb cut on that property is going to help. S. Haight explained that the location of the driveway would be on the straight-away and the entrance would be on its own lot, 150 ft. or more from the other entrance. S. Haight has done the tractor-trailer entering/exiting on this lot and it works.

S. Gerome stated there were no description of display spaces. He did not see the reason for additional signage; he was concerned about a large amount of lighting. S. Gerome continued that he did not want to see 'another full blown' dealership unless that was what they wanted approved; a dealership already exists on that site. S. Haight responded this would be ancillary to the existing facility. Lighting is included on the plan; lighting can be adjusted to reduce spillage. Some lighting is for security purposes. S. Gerome stated he would prefer the bare minimum for security. M. Fougere noted the regulations call for an average; the planned lighting exceeds the Town's standards and should be dropped down to 1.6 or less. Lighting cannot be more than .2 across the property line.

S. Gerome stated that he would like to see the tractor-trailer unload defined on the revised plan: unload, road, access, drop off and how it is leaving. S. Haight will provide a traffic pattern. Sheree Allen, owner/applicant, stated this lot would take unloading off the road. S. Haight added that the drive aisle is more than adequate for use by a tractor-trailer. S. Gerome would like Altus Engineering to review.

S. Gerome opened the hearing to public comments. S. Gerrato, speaking as the public, reminded the Planning Board that there is a precedent: the gas company was not allowed to pave their property. He felt the same should be done in this case. S. Gerrato clarified that the gas company needed to work on their pipes that were in the wetlands. J. McDevitt further clarified the location was across from Target/Lowes adjacent to Ameri-Gas. J. McDevitt was uncertain if that could be applied to this size project.

Kathleen Anania, 316 Portsmouth Avenue: Voiced her concerns about the condominium leach field located across from the Mercedes dealership. If there is a lot of rain, it goes into their leach field. K. Anania stated that the signs regarding unloading are not working; tractor-trailers are still parked on the road and she was concerned that if there was a back-up in the lot, tractor-trailers would still park on the road. Vehicles are dropped off at all hours and leave their trucks running. Lights are on 24/7 and additional lighting could be an issue. Traffic will also increase and speeding is an issue, even with their employees. K. Anania felt there was no respect for the residents in the area. S. Allen responded that employees who are speeding will be terminated; lighting can be adjusted.

S. Gerome stated there is a water issue in that area but it is not coming off their site. S. Haight stated that the drainage from their site does not flow across the street; it goes down towards Rt. 33 and it will be captured. Lighting: when a dealership parking lot is done, lights are done to a specific time of night and security lighting is turned on; the number of lights can be specified on the plan. Lighting can be designed to the least amount for safety. Providing additional area coming off the road for existing deliveries is an operational issue that can be addressed. The proposed lot will get the trucks off the road.

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K. Anania asked if they were planning to remove any trees on the Portsmouth Avenue side. S. Haight explained that side is controlled by NHDOT. When the driveway permit is filed, DOT will determine if the roadside ditches needed to be cleaned out. Trees will not be removed if it is not necessary. Their intent is to not remove the trees along the frontage; they will be adding trees. M. Fougere requested the new entrance be staked. S. Haight will stake the entrance and stated the entrance is near the three utility poles.

There being no further comments, S. Gerome closed the public hearing and returned to the Board for further discussion. S. Gerome summarized that lighting and trucks off the road were concerns. J. McDevitt stated that it is an allowed use in that area. S. Gerome stated that lighting and truck unloading should be defined and the review from Altus Engineering should be available at the next public hearing. B. Dion commented that he was not happy with the wetlands intrusion and did not feel it was necessary. S. Gerome noted that it was allowed by the ZBA.

MOTION: J. McDevitt moved to continue the Site Plan Review and Conditional Use Permit, 309 Portsmouth Avenue (Map R21, 65), to the public hearing on Thursday, September 16, 2021. Second – B. Dion; all in favor. MOTION CARRIED

5. Approval of Minutes

Approval of minutes from the meeting on Thursday, June 17, 2021, was continued to the next meeting.

MOTION: J. McDevitt moved to approve the minutes from Thursday, July 15, 2021. Second – C. Medeiros; five in favor, one abstained (S. Gerome). MOTION CARRIED

6. Approval of Invoices

MOTION: S. Gerome moved to approve the invoice from Altus Engineering from the Planning Board Escrow Account in the amount of \$1,578 (177 Winnicut Road - \$678; 410 Portsmouth Avenue - \$900). Second – S. Gerrato; all in favor. MOTION CARRIED

MOTION: J. McDevitt moved to approve the invoice from Fougere Planning & Development: Planning Board Town Budget--\$1,001.96; Planning Board Escrow Account--\$236. Second – B. Dion; all in favor. MOTION CARRIED

7. Other Business

Van Etten Drive: M. Fougere updated the Board on the status of the approval for Van Etten Drive, explaining that it was a cluster subdivision approved approximately ten years ago. At the time, bonus points were given for certain amenities. A public park was proposed that included a playground, picnic tables and a garden area. At the end of the project, some homeowners approached the Planning Board because they did not want a public park. The Board was adamant and explained its position to the homeowners. An extra house lot was allowed due to the stipulation as a condition of approval; the improvements were installed by the developer. M. Fougere has confirmed that the swing set, picnic tables and garden are gone, noting it was a very expensive swing set.

The Board was concerned other HOA's may do something similar and discussed their options. M. Fougere noted that it was a condition of approval and the developer received an additional house lot.

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One suggestion was that the Town be reimbursed the value of a lot on Van Etten Drive. A public park was also suggested.

S. Smith stated that it was the HOA's responsibility. The Board felt that correspondence with the HOA and Planning Board discussions were very clear that the amenities could not be removed. It should be a topic of discussion between the Board of Selectmen, Code Enforcement Officer and Town Attorney. A letter will be written to the HOA.

Rain Gardens: B. Dion noted that at the June public hearing, Laura Byergo, Conservation Commission Chair, offered to schedule a presentation about the proper construction of rain gardens and their proper maintenance and function. He would like to have the presentation scheduled.

Work Session: There was a discussion about moving the meeting scheduled for Thursday, September 02, 2021, to Thursday, September 09, 2021, due to the Labor Day holiday.

MOTION: B. Dion moved to hold the work session on Thursday, September 09, 2021. There was no second. MOTION DENIED

There will be a work session on Thursday, September 02, 2021, at 6:30 p.m.

PDA: Susan Parker, Greenland/Newington PDA representative, will be attending a work session in the near future.

8. Topics for Work Session: Thursday, September 02, 2021

The Capital Improvement Plan (Town and School) will be reviewed and discussed.

9. Adjournment

MOTION: S. Gerome moved to adjourn at 8:25 p.m. Second – J. McDevitt; all in favor. MOTION CARRIED

NEXT MEETING

Thursday, September 02, 2021 – 6:30 p.m., Town Hall Conference Room

Submitted By: Charlotte Hussey, Administrative Assistant