



TOWN OF NEW LONDON, NEW HAMPSHIRE

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PLANNING BOARD APPROVED MEETING MINUTES September 24, 2013

MEMBERS PRESENT: Tom Cottrill (Chair), Jeff Hollinger (Vice-Chair), Paul Gorman (Secretary), Emma Crane (Conservation Commission Representative), John Tilley, Michael Doheny (Alternate)

MEMBERS ABSENT: Deirdre Sheerr-Gross (Alternate), Peter Bianchi (Board of Selectmen's Representative), Michele Holton, Bill Helm (Alternate)

STAFF: Lucy St. John (Planning and Zoning Administrator), Kristy Heath (Recording Secretary)

Chair Cottrill called the meeting to order at 7:00pm.

Final Site Plan Review – Los Quatros Amigos, (084-004-000) 370 Main Street

Ms. St. John said the applicant came in for a conceptual discussion about a month ago (August 27th meeting) and were now presenting with their final site plan. Abutters have been noticed. Ms. St. John referred to the staff report highlighting the provisions of the Zoning Ordinance which need to be addressed, as well comments on the parking and landscaping requirements. She explained that the applicant has requested several waivers. She said both the Fire and Police had no issues and referred to the other comments in the staff report.

Will Davis, Horizon Engineering was present to explain the plan. He showed a map of the existing conditions of the property. There had been a 38x40 barn on the property that was recently demolished. He showed the location of existing parking, as well as walkways, paved areas and trees and noted that 59.6% of the lot is currently impervious area. The plan calls for a 24'x34' building located at the site of the old barn and parking modification. They will stripe the parking area facing south to better define the seven available spaces.

Mr. Davis said they will remove a section of pavement to increase the landscaped area. They plan to keep the walks and trees. Information was provided to the Board about their lighting plan, which included the use of downward facing LED fixtures.

Mr. Davis said based on the parking requirements for the business and residential uses of the building, they need 21 spaces, which they have provided. They will have one ADA space available. After the changes are made, there will be a decrease in impervious area, to 57.3%.

Mr. Davis said they will use vertical siding on the building. It would also have a standing seam roof and a cupola to mimic the look of a barn.

Ms. St. John was asked if the application was completed. She said the application is complete, however there are some zoning and site plan requirements that need to be addressed, including the density issue pertaining to the additional residential structure proposed. The Board felt the waivers were reasonable.

IT WAS MOVED (Jeff Hollinger) AND SECONDED (Paul Gorman) to approve waivers for structures within 200', topography, and drainage. THE MOTION WAS APPROVED UNANIMOUSLY.

Chair Cottrill asked if there were any easements or agreements where other businesses would share parking spaces. Karen Timbrell said they share an informal arrangement for parking with abutting properties, particularly Woodcrest. They occasionally have an issue with people parking in their spaces but after a phone call, the situation is remedied without a problem.

Chair Cottrill asked if snow storage had been included on the plan. Mr. Davis said it was and pointed out the areas on the map. Karen Timbrell said that Colby-Sawyer College plows the right of way and the only portion they have to take care of themselves is the parking area.

It was the consensus of the Board that the parking was fine, as presented. The location of the dumpster and screening was discussed. Will Davis explained that it isn't visible from either Main Street or Woodcrest Lane, but they would screen it if the Board requested. Mr. Tilley said the ordinance states that dumpsters should be screened by use of fencing or shrubs.

Ms. St. John said the proposal is for a new residential structure, and referred to the staff report discussion on the density. The Board agreed the site is a mixed-use site and having this additional detached residential structure would meet zoning requirements as defined, regarding one main building and accessory buildings.

IT WAS MOVED (Jeff Hollinger) AND SECONDED (John Tilley) to approve the final site plan review for the Los Quatros Amigos property contingent upon screening the dumpster, with the screening details to be shown on the plan and the clarification that the 911 street name be included on the plan (Whipple Court or Woodcrest Lane). THE MOTION WAS APPROVED UNANIMOUSLY.

Site Plan Discussion ONLY– Marshall's Garage, 330 Elkins Road (Tax Map/Lot: 077-037-000)

Chair Cottrill asked Ms. St. John to provide a brief review of the situation. She recapped what was discussed at the last Planning Board meeting, stating both she and the Town Administrator had visited the McChesney property. A letter was sent to Mr. Marshall who responded promptly coming to the Town Offices to meet with her and the Town Administrator. Mr. Marshall allowed her to visit his property, following that meeting. She noted that Mr. Marshall and Mr. McChesney are both here this evening with their legal counsel. She noted this was continued from the Sept 10th Planning Board meeting. She referred to her letter of August 13th. She opined that the Planning Board has the responsibility to determine if site plan review is needed. She said the initial issue brought to the Town's attention was the removal of trees that provided screening on the border with McChesney. She noted lighting is also an issue now that the screening has been removed. Since that time, allegations of other issues at the Marshall's property have been offered by Mr. McChesney's attorney.

She said the Board should decide as to whether a site plan review was in order.

Mr. Hollinger wondered what each group was trying to accomplish. Mr. Marshall said he was trying to preserve his building as the rear portion was rotting, and thusly the vegetation was removed. Attorney John Arnold, representing the McChesneys said his client wasn't concerned with making the garage go away, but want to make sure commercial use of the property was in compliance with the Zoning Ordinance and Site Plan Regulations. They believe the current issues warrant a site plan review to determine what other changes have occurred on the Marshall property since the last site plan review back in 1998.

Mr. Hollinger felt it was a shame that both parties can't figure out how to solve the problem, which appears to be a screening issue. He felt it was too bad they were there with lawyers to represent them. Attorney Arnold agreed and felt that both parties felt the same way.

Attorney Arnold said the issues occurring right now go beyond private disputes with the neighbors but whether the Town's regulations are being followed. He explained they believe there have been a number of substantial changes to the site since the last site plan in 1998 including issues related to screening, lighting, noise, drainage and traffic.

Attorney Melanie Bell, representing Mr. Marshall, distributed a letter to the Planning Board to consider as part of their deliberation. The letter was addressed to the Chair and dated September 24, 2013. Ms. St. John read entire letter into the record.

Chair Cottrill suggested the cutting of the trees was the issue. Ms. St. John reiterated that the issue brought to the Town's attention was the removal of the vegetative buffer, and since that time more issues have been brought to the attention of the Board.

Attorney Bell questioned why the Board was taking the authority to ask for site plan review. Ms. St. John explained that when this issue was brought to the Town's attention, the Town's approach was to identify the concerns, visit the site, and then a cordial letter was sent to Mr. Marshall. The Town's approach was to inquire of the issues of concern and bringing them to the appropriate Board's attention. She explained that the letter to Mr. Marshall asked that he meet with the Planning Board. The letter does not imply or suggest that there are any zoning violations. She did explained that in the file there is a letter to the Division of Motor Vehicles from the Town in October 2012 regarding Marshall's Garage and its compliancy with zoning provisions. At that time, the Town was not aware of any known zoning violations or concerns about the site plan.

Ms. St. John explained that the Town has adopted Site Plan Regulations, as has other towns, which gives them the authority to do site plan review, she also referred RSA 674:43 and 44.

Attorney Bell said she objected to this explanation.

Attorney Arnold referenced the Site Plan Regulations, Article I, and section (D), on page 2. He explained Mr. Marshall did not follow that procedure when he made changes to his property. Attorney Bell said this discussion was only about some trees that were cut, she noted that this has nothing to do with a change of use. Ms. St. John reiterated that site plan regulations not only include provisions regarding change of use, but address other changes which occur on a property, as this issue has to do with screening, lighting, noise and etc., all of which are typically addressed during the site plan review process.

Attorney Bell said this is a legal, non-conforming use and common law says that new regulations cannot be applied to the property. Attorney Arnold disagreed with this and sited the fact that Marshalls came in for site plan review in 1998.

Peter Stanley (former Zoning Administrator) said he has been following this issue and that he doesn't have a dog in this fight. He knows the Town followed the letter of the law up until about a year ago but is unsure now. He explained to the Board how a violation was previously handled by the Town, and that the Planning Board has no authority to act on this issue, if it is a zoning violation. He continued by outlining the previous process the Town has used that he believes should be followed. He said that the way this issue is currently being handled is leading the Town down a dangerous path, and as a taxpayer he is concerned about possible litigation, if the Board of Selectmen and Planning Board follow the advice given by the current staff including the Town Administrator and Planning and Zoning Administrator.

He explained that if there is a violation, a notice is presented explaining the provision and statute that has been violated. Then possible remedies are suggested which might include coming before the Planning Board with an application to do a site plan review. It must also include information that they have the right to appeal the question to the Zoning Board of Appeals. He stated that someone has issued a summary judgment and brought

people before the Planning Board that has no authority at this stage to rule on any statute. Authority is given to the Board of Selectmen who may delegate to the Planning Board or the Zoning Board of Appeals. Mr. Stanley said he didn't want to see his Planning Board be a party to this irresponsible activity. If there is a violation, the Selectmen are to notice it. The Planning Board's job, if the applicant chooses to come before them, is to review the issue. He said in the case of the Marshalls, they are talking about something that may or may not be a zoning violation. That is not what the statutes dictate and the Board needs to follow the law directly. He strongly suggested that Chair Cottrill contact the Town Attorney directly as this is a path he should not continue on.

Mr. Doheny thanked Mr. Stanley for his comments. He felt in the earlier meeting when this case was brought before them that he didn't have enough facts and there was no comparison between the 1998 plan and the use of the property. He noted that he has wanted to see a comparison of what was shown on the 1998 plan and what are the uses now.

Ms. St. John reiterated that her letter of August 13th to Mr. Marshall was reviewed by the Town Administrator prior to it being sent, and that the Town Administrator agreed with it and that she was not there to provide legal advice. She noted that in the letter the direction given was, that the Planning Board would need to make a determination if they believe site plan review is warranted.

Mr. Gorman said there seemed to be a disagreement on who has authority over this issue. He said the Selectmen appoint the Planning Board and they have a preceding authority over this kind of thing. He felt that this whole issue should be referred to the Selectmen and if they want to refer it to the Planning Board or the Zoning Board of Appeals that is fine. Chair Cottrill said this is what had happened in the past when a violation had been issued.

Attorney Arnold said under site plan regulations the Town has given authority to the Planning Board to decide if site plan review is needed.

Mr. Gorman said the Selectmen need to decide what Board should proceed to make this decision. Attorney Arnold reiterated that it is up to the Planning Board to decide and he felt they were authorized to do so.

Mr. Doheny said when two parties show up with their attorneys, the Board will err on the side of caution. If it takes a little more time, that is fine with him. Other members agreed with this sentiment. Chair Cottrill agreed with Mr. Gorman and suggested referring this matter to the Selectmen. Mr. Hollinger said the case needs to get to the Planning Board in the right way. Making the decision isn't the problem, it is protocol they need to follow and they don't want to set precedence in this case.

Mr. Tilley said because there are two lawyers telling them different things, he would like input from Town Counsel. The Board agreed.

IT WAS MOVED (Jeff Hollinger) AND SECONDED (John Tilley) to refer this case to the New London Board of Selectmen. THE MOTION WAS APPROVED UNANIMOUSLY.

Kearsarge Regional School District – Discussion of Traffic Changes on Cougar Court

Michael doCurrall, Director of Facilities for Kearsarge Regional School District, was present at the meeting. In the spring he was tasked with how to address congestion issues at the New London Elementary School. Chair Cottrill said they have asked the school district to come in because the changes impact not only Cougar Court but also Pleasant, Main and Gould Streets. Mr. doCurrall apologized for not coming to the Board prior to making the changes. Mr. doCurrall said this was an oversight due to sick leave and that he knew he was supposed to come in to meet with the Planning Board but he wasn't able to come in.

Mr. doCurrall provided a brief history, explaining input was solicited from some town officials (Fire and Public Works) to review the current traffic circulation issues in and around the school. Ed Andersen, Police Chief was in attendance and noted at that time he wasn't involved in the discussion, but has since weighed in. Mr. doCurrall explained they have installed a stop sign at the intersection of Cougar Court and Pleasant Street, and the traffic circulation pattern has been changed with arrows painted on the pavement surface, showing the new two-way traffic circulation pattern.

Chair Cottrill wondered if the change in traffic flow had resolved any of the problems from last year. Mr. doCurrall said it had. Mr. doCurrall said since this was changed recently, it has really helped alleviate many of the traffic issues around the school, and has helped disperse the traffic more quickly. There is a 20-minute window in the afternoon that is chaotic that has been remedied by creating an outlet for traffic. Police Chief Ed Andersen said at first he was concerned with the change, but spent the first three days of school there and felt it worked very smoothly. They may need an officer there the first day of school each year because parents want to drop off their kids. But after the first day, traffic has been less of an issue. To date, he hasn't had any complaint of people passing school busses while kids were getting on and off of them.

Mr. Doheny said this traffic pattern offers more exits than the previous one, which had just one outlet.

Mr. doCurrall said that a few spaces in the parking lot were lost due to the creation of the outlet but noted the lot was rarely used to capacity it shouldn't pose a problem.

Ms. St. John referred to the provisions of RSA 674:54 Governmental uses of land, noting that either the governing Board of Selectmen or the Planning Board of a municipality may conduct a public hearing relative to the proposed governmental use. It was the consensus of the Planning Board that a site plan and a public hearing were not necessary in this instance. Department heads had weighed in on the plan and it seems to be working well.

Nancy Rollins – Representative to the Regional Planning Commission

Ms. Rollins said the Upper Valley Regional Planning Commission is conducting a series of public meetings around the region. Ms. St. John noted the previous announcement of these meetings was provided to the Planning Board. Ms. Rollins handed out the meeting notice to the board. She explained that one of the meetings will be held at the Tracy Memorial Library on October 10, 2013 and that anyone interested can attend this meeting or any of the other meetings scheduled in the region. The UVLSRPC will present reports and outcomes of studies they have done and remarks on different towns' master plans. They offer a time to share the Town's plans with the commission at the meeting. She and Bob Crane are both planning to attend the meeting. She encouraged and invited the Planning Board to attend.

CIP Update

Ms. St. John said she gathered some information from other communities and will discuss it at the department head level to get their input. She explained that the current CIP process and format should be updated and these updates will be discussed at the Oct 8th meeting. She explained the CIP committee included members of the Planning and Budget Committee. The first Budget Committee meeting is scheduled for October 9, 2013 and at that point they will choose a chair and also the representatives for the CIP committee. The Planning Board leads the CIP process.

Zoning Amendments

Ms. St. John said she has been working with the Water Resources Committee, under the direction of Rick Anderson (Conservation Commission). This committee is reviewing water resources related provisions of the ordinance and will likely be suggesting some possible zoning amendments to consider.

She noted this committee effort may likely include suggested language which may differ with what she will propose as part of the discussion on possible zoning amendments.

Review of Minutes

IT WAS MOVED (Jeff Hollinger) AND SECONDED (Paul Gorman) to approve the minutes of September 10, 2013, as circulated. THE MOTION WAS APPROVED UNANIMOUSLY.

Other Business

Ms. St. John explained that Alex Newirt of Canary Systems located at the corner of Gould and Pleasant came in to see her on September 16th. He would like to install an observation well on this property. The well would be done by hydro boring-above the bedrock, not a drilled or blasted well. He inquired about any local bedrock study. The observation well would be used for demo of live equipment (feed data), instrument testing and training. The training would occur several times a year with 2-3 people per training session. He noted that it would essentially look like an 8 inches steel casing (like an artesian well) coming out of the ground, to be located in the front yard. He says they have 7 full time employees. He wants to do the installation this fall before winter. They produce and install equipment for business and industry all over the country- for example if a town has a dam they install the monitoring equipment. This well would be used to train personnel who install and monitor such related electronic monitoring equipment. She noted that she had asked Public Works and Fire if they had any concerns. She noted that Public Works commented that there are lots of test wells in town at different locations that didn't have site plan approval. It was noted that there is some other equipment (possibly weather equipment) that has been installed on the property. Ms. St. John explained that to Mr. Newirt she would ask the Planning Board if site plan review would be needed.

The Board initially suggested that he come in only for preliminary. Ms. St. John asked for clarification, as preliminary is different from a conceptual discussion, and if the intent was to require that abutters be notified. The Board noted that the equipment is in the front of the building, and that the well and training may be of interest to abutters. Ms. St. John was advised to let Mr. Newirt know that the Planning Board would like to see a plan showing the equipment location, what the well and equipment look like, and that abutters should be notified. They noted that all the site plan requirements details wouldn't be necessary. Their concern is the location of the equipment and parking, and this should be shown on the plan. The Board noted that waivers for the other site plan details would be considered as he had previously come before the Planning Board.

Timeless Kitchens - Kidder Building

Ms. St. John noted Janet Kidder submitted a letter regarding a change of occupancy, received Sept 22, 2013. The letter and fast track application (she noted this is no longer used), states that the Timeless Kitchens will no longer be the tenant. Grace Hill Construction (Dag Lidbeck, owner) will lease this space for his office showroom.

Ms. St. John explained the overall office appearance will be the same, Grace Hill Construction will be coordinating their work with employees of Timeless Kitchens and he will install cabinets and other things for customers. She asked the Board if they considered this a change of use or if site plan were needed. Chair Cottrill didn't see that this was a change in use. The Board agreed that it wasn't a change in use, and that it would be ok to proceed, with the comment that no additional construction vehicles would be parking in the spaces immediately in front of the store entrance overnight so parking would not be impacted.

Building Permit at Property 17 Elkins Road – New House Construction

Ms. St. John said that after the previous building had burned, the owners (Ernos Pongratz) came in to get a building permit to rebuild. The permit was issued and construction began. The structure appears taller (greater than 35 feet allowed per the Zoning Ordinance. Ms. St. John referred to specific provisions of the Zoning Ordinance, asking for clarification and intent of these provisions from the Board, specifically, Article II-

General Provision, page 5, # 5- Height Regulations and Article III, Definitions page 25- # 66 Grade, #70 Height and # 71 Highest Adjacent Grade.

Ms. St. John explained that Mr. Pongratz submitted some calculations showing the average grade, as one side exceeds the 35 feet limit. The Board reviewed the specific language of the definition of grade, and said that the ordinance stipulates calculations for average height based on average grade on each side, allowing the height on one side to exceed 35 feet but that when averaged with the other sides of the structure as defined the average height must remain at or below 35 feet. Chair Cottrill said it would be important to verify the calculations especially when the average height is near 35 feet. Ms. St. John noted she asked for the Fire Chief's input and that he expressed concern about the height as the ladder on the truck may not be able to reach it, if needed. The Board noted that other walls of the building would be accessible by the ladder and that this was not a problem. The Board agreed the height on one side could exceed 35 feet, as the term average is used in the definition.

Cell Tower Meeting, Sutton

Ms. St. John noted receipt of a notice from the Town of Sutton regarding the construction of a cell tower on or at Route 103. There would be a meeting to discuss this on October 8 at the Pillsbury Memorial Hall. Ms. St. John explained that Towns are given notice per the RSA requirements.

**IT WAS MOVED (Jeff Hollinger) AND SECONDED (John Tilley) to adjourn.
THE MOTION WAS APPROVED UNANIMOUSLY.**

The next meeting is scheduled for October 8, 2013 at 7:00pm.

The meeting adjourned at 8:39pm.

Respectfully submitted,

Kristy Heath, Recording Secretary
Town of New London