



OLD VALUES - NEW HORIZONS
COMMUNITY DEVELOPMENT

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Planning Board Minutes

July 6, 2022

7:00 pm at Community Development Meeting Room
3 North Lowell Road

Attendance:

- Chair Tom Earley, Present
- Vice Chair Jennean Mason, Present
- Derek Monson, Present
- Jacob Cross, Present
- Matt Rounds, Present
- Alan Carpenter, Present
- Joe Bradley (alternate), Present
- Dave Curto, (alternate), Present
- Pam McCarthy (alternate), Present
- Dan Spalinger (alternate), Present
- Bruce Breton, Board of Selectmen ex Officio, Present
- Alexander Mello- Planning Director, Community Development, Present
- Chris Sullivan- Assistant Planning Director, Community Development, Present
- Renee Mallett- Minute Taker

The meeting opened at 7:03pm with the pledge of allegiance and the introduction of members.

The board met with applicants for open positions on both the Design Review Committee and the Capital Improvements Program. Kathleen Harris shared her experience in planning and said as a recent Windham resident she wanted to become more involved with the town. Mr. Cross asked if Ms. Harris was a developer or if she or anyone else in her family worked in development. Mr. Rounds explained the work associated with the sub-committee.

Corey Porter, 3 Glance Road, also moved to Windham recently. He works in insurance as a construction risk specialist. Mr. Porter comes from an engineering family and his wife works with an architectural firm in Lawrence. Mr. Porter told Mr. Cross that he did not work as or for a developer.

Eric Crawford has also expressed interest in the CIP. He was not present at the meeting but Mr. Mello read his letter of interest into the record.

Case 2022-03 – 1 & 7 Indian Rock Road (Parcels 11-A-450 & 11-A-500); Major Final Site Plan; Final Subdivision, and WWPD Special Permit; Zone – Village Center District

42 Mr. Karl Dubay representing this application to build a mixed-use commercial building, a stand-
43 alone restaurant, and an eight-unit residential subdivision in the Village Center District. This application has
44 been discussed and continued by the Planning Board on several previous occasions.

45 Mr. McCarthy, the applicant, presented some updated views of the proposed development. Mr.
46 McCarthy said the plan currently shows 138 parking spaces, he supplied a report from his traffic engineer
47 which shows that at peak usage based on expected tenants 119 spaces would be utilized. A Keach-
48 Nordstrom memo has been received and addressed regarding this latest iteration of the plan.

49 Mr. Breton asked how close the restaurant was to Hardwood Drive. Mr. McCarthy said there was a
50 50-foot landscaped buffer on that side and that they had worked with an abutter to add additional
51 screening to that property.

52 Mr. Carpenter asked about the septic system. He asked for further explanation about how the
53 proposed age restricted housing would offset the water usage of the commercial properties. Mr. Carpenter
54 also had safety questions about Hardwood Drive. Mr. McGuire, of the Dubay Group, explained how the
55 posted speed and the expected actual speed of the road was taken into consideration in conjunction with
56 the sight distance. Mr. McCarthy said he was willing to pay for additional speed limit signs for that road, as
57 had already been requested by some abutters. Mr. McGuire said the plan was created with options for
58 clearing a greater sight distance if needed.

59 Mr. Carpenter was concerned with hours of operation as this would be a commercial enterprise
60 surrounded on three sides by residences. Mr. McCarthy said the restaurant patios were facing Rt. 111 and
61 that most of the tenants that had already shown interest in the parcel were for the most part local families
62 who would not be seeking extended hours.

63 Mr. Carpenter said per the plan it looked like the edge of the second story patio was about 25 feet
64 from Rt. 111. Mr. McGuire and Mr. Randy Knowles confirmed that the illustrations supplied were based off
65 the CAD renderings of the plan and should accurately reflect the real distances. Mr. Carpenter confirmed
66 that the video shown by the applicant would be part of the record. Mr. Carpenter said if the actual product
67 ended up like the plan being presented, he would be very happy.

68 Further discussion between the applicant's representatives and the board estimated that the
69 fourteen-foot patio was closer to 30 feet from Rt. 111 than the 25 supposed by Mr. Carpenter. Mr. Bradley
70 asked for the exact slope of the Rt. 111 side of the parcel and the area in front of the patio. Mr. McGuire
71 said it was a 2 to 1 slope for the most part but that the pedestrian walkway between it and the road meant
72 there was some variation. Mr. Rounds asked if age restricted housing was altered or eliminated in the state
73 of New Hampshire how that would impact the residential neighborhood on this parcel. Mr. McGuire said it
74 was deeded on the residential properties because of how they were being used to offset the septic loading.
75 Mr. McCarthy and Mr. McGuire both said the age restriction on the housing would be in perpetuity.

76 Mr. Spalinger asked about the temporary jersey barriers shown on the plan. He asked how long
77 they would be used and when they would be removed. Mr. McCarthy said they would be used until the rest
78 of the Village Center District was developed. He said if it was not the jersey barriers would become more
79 permanent fixtures. Mr. Spalinger and Mr. McCarthy both agreed that in that situation the use of a large
80 boulder would be a more aesthetically pleasing option for long-term or permanent use.

81

82 **Chair Earley opened and closed the session to public comment.**

83

84 **Mr. Carpenter made a motion to approve the final subdivision for Case 2022-03, including the**
85 **septic loading as laid out in the presentation this evening and the associated easements, all pending**
86 **satisfactory review of the town counsel. Mr. Rounds seconded the motion. The motion passed with the**
87 **following 7-0 vote:**

88 **Chair Earley, aye**

89 **Vice Chair Mason, aye**

90 Mr. Monson, aye
91 Mr. Cross, aye
92 Mr. Rounds, aye
93 Mr. Carpenter, aye
94 Mr. Breton, aye
95

96 Mr. Carpenter made a motion to approve the conditional use permit for the lot arrangement
97 because it meets the following required criteria: A) deeded access to a Class 5 or better road, B) adequate
98 public access and safety provided by covenants C) design consistent with VCD purposes, D) the design
99 meets the spirit and intent of the master plan and E) it is subject to approval per RSA 674:41, referencing
100 Sheet 3, Note Z-1. Mr. Cross seconded the motion. The motion passed with the following 7-0 roll-call
101 vote:

102 Chair Earley, aye
103 Vice Chair Mason, aye
104 Mr. Monson, aye
105 Mr. Cross, aye
106 Mr. Rounds, aye
107 Mr. Carpenter, aye
108 Mr. Breton, aye
109

110
111 Mr. Carpenter made a motion to approve the major final site plan for Case 2022-03 with the
112 following conditions: that all terms of the latest Keach-Nordstrom memo be noted on the plan and met
113 to staff's satisfaction, that line of sight when exiting to Hardwood Road will be as presented on the plans
114 but that the applicant acknowledges it can be extended to 300 feet if staff deems necessary, pending
115 legal review and approval of the covenants by town council, and that the jersey barriers will be replaced
116 by landscaping boulders. Mr. Rounds asked if a condition could be made that the slope does not exceed
117 the 2 to 1 grade presented on the plan. Mr. Carpenter said he already did that by asking that the video
118 would be part of the record. Mr Sullivan said it was also already noted in the plan. Mr. Rounds said he
119 would like additional assurance. Vice Chair Mason seconded the motion. The motion was then amended
120 to further say that the applicant will work with staff on the design of the pocket park, that the front slope
121 would not exceed 2 to 1 and that the approval was contingent on all state approvals being granted. Vice
122 Chair Mason said her second still stood. The motion passed 7-0, with the following roll-call vote:

123 Chair Earley, aye
124 Vice Chair Mason, aye
125 Mr. Monson, aye
126 Mr. Cross, aye
127 Mr. Rounds, aye
128 Mr. Carpenter, aye
129 Mr. Breton, aye
130

131
132
133 Mr. Carpenter made a motion to approve the requested waivers of: the drainage pipe cover, per
134 705.2.3, with an aside to staff to look at this as a warrant article in the future, to approve the WWPD
135 special permit, and to waive the marking of 12 inch or greater trees. Mr. Cross seconded the motion. The
136 motion was amended to add that waivers were conditional on site plan approval being met. The motion
137 passed 7-0, with the following roll-call vote:

- 138 **Chair Earley, aye**
- 139 **Vice Chair Mason, aye**
- 140 **Mr. Monson, aye**
- 141 **Mr. Cross, aye**
- 142 **Mr. Rounds, aye**
- 143 **Mr. Carpenter, aye**
- 144 **Mr. Breton, aye**

145
146
147 Mr. McGuire said there was a needed waiver of 602.2.5.3B, the 3% grade of the 50 to 100 feet
148 road requirement. Mr. Rounds asked if this was an issue with police or fire. Mr. Mello said the plan had
149 been seen several times at the TRC without comment. Mr. McGuire said improvements had been made to
150 the initial 50 feet of the road to keep it under the necessary 3% grade but because of the topography of the
151 lot, in order to meet the slope of the residential neighborhood, the grade had to ramp up in the middle
152 length of the road.

153
154 **Mr. Carpenter made a motion to approve the waiver of section 602.2.5.3B conditional on**
155 **highway and safety reviewing this specific grade. Mr. Cross seconded the motion. The motion passed 7-0,**
156 **with the following roll-call vote:**

- 157 **Chair Earley, aye**
- 158 **Vice Chair Mason, aye**
- 159 **Mr. Monson, aye**
- 160 **Mr. Cross, aye**
- 161 **Mr. Rounds, aye**
- 162 **Mr. Carpenter, aye**
- 163 **Mr. Breton, aye**

164
165
166 **Mr. Cross and Mr. Curto excused themselves from the meeting at 8:13. Mr. Spalinger was seated**
167 **for Mr. Cross.**

168
169 **Case 2022-14 - 8 ledge Rd. (Parcel 11-A-161); Minor Site Plan Application;**
170 **Zone – Limited Industrial**

171
172 **Mr. Rounds made a motion to open Case 2022-14 after confirming with Mr. Mello that the**
173 **application was complete and appropriate. Mr. Monson seconded the motion. The motion passed 7-0**
174 **with the following roll-call vote:**

- 175 **Chair Earley, aye**
- 176 **Vice Chair Mason, aye**
- 177 **Mr. Monson, aye**
- 178 **Mr. Rounds, aye**
- 179 **Mr. Carpenter, aye**
- 180 **Mr. Spalinger, aye**
- 181 **Mr. Breton, aye**

182
183
184 David Peter representing the applicant who is looking for a change of use to this limited industrial
185 property as a bus storage area. First Student has recently signed a multi-year contract with the Windham

186 School District. Mr. Peters described this property as having several tiers and is currently being used a
187 contractor storage yard. The plan is to clear the upper tier of the property for the storage of up to forty
188 buses. The existing building on site will also include a few office spaces for First Student administration. No
189 changes to the interior or exterior of the building is being proposed. No site changes are being proposed. It
190 is an existing hardpacked gravel surface that is well suited for the parking of buses and employee vehicles.
191 During the winter months First Student would like to bring in two temporary lights for employee safety
192 during the morning and evening hours. He said they would be dark sky compliant and timed to turn on a
193 half hour before use begins and an hour after the business day ends.

194 The Keach-Nordstrom memo regarding this application has been received and the four items listed
195 have been addressed. Mr. Carpenter had concerns about the generator for the lighting impacting abutters.
196 A representative of First Student said their intent was to use solar powered units so there wouldn't be noise
197 from any generators. Mr. Breton raised the matter of 40 buses coming in and out at roughly the same time,
198 plus 40 employee vehicles entering and leaving. Chair Earley said it looked like two homes would be most
199 impacted but that they must already be acclimated to this use as construction vehicles currently utilize the
200 lot. Mr. Breton said he was involved during the initial approval of the existing use and that a mitigating
201 factor in approval was that construction vehicles weren't coming and going all at the same time.

202 Mr. Fairweather, the area general manager of First Student, said 26 of the vehicles were big buses
203 but 15 were smaller buses usually for special needs students. He said it would not be a blast of forty buses
204 at one time, but forty spread out over about an hour. Mr. Breton said the point of egress was about 8 feet.
205 Mr. Fairweather said the property owner had told them it was a 24-foot-wide road and they did not expect
206 that their buses would have trouble maneuvering it. Chair Earley said he understood the staggering but that
207 the homes were about 100 feet from the lot. He asked if any strategies had been used in the past in dense
208 residential neighborhoods. Mr. Fairweather said they did not allow buses to idle for any length of time and
209 that these vehicles would all be new 2023 buses.

210 Chair Earley asked about the impacts of 40 buses, even new ones, right on the edge of the WWPD.
211 Mr. Peter said there is a closed drainage system already existing on the property that was put in place when
212 the contractor yard was approved. Mr. Rounds said he did not think light industrial should be placed next to
213 residential zones, but that this is an existing zone and he thought it's a reasonable use. Mr. Carpenter
214 agreed that this was probably less invasive equipment than what was already existing but that there would
215 be more of it. He confirmed with Mr. Mello that abutters had been notified and noted that no one from the
216 public was here to ask questions.

217
218 **Chair Earley opened and closed the session to public comment.**

219
220 Mr. Spalinger asked if the drainage needed any maintenance or cleaning that should have been
221 done or had been done so they could confirm there would be no runoff to the WWPD. The property owner
222 confirmed that maintenance had been done and that he could show it had been serviced as recently as six
223 years ago.

224 Shannon Ulery, representing the school board, spoke to the board via Zoom about the benefits to
225 the students, residents, and bus employees to have the buses kept in town.

226
227 **Mr. Rounds made a motion to approve Case 2022-14 with the condition that solar powered lights**
228 **would be used. The motion was seconded by Mr. Breton. Vice Chair Mason asked that catch basin**
229 **maintenance be confirmed. Mr. Mello said the maintenance schedule had been part of the previous use**
230 **approval. Some debate followed on if this would burden the applicant unduly for actions that were**
231 **required to be done by the owner of the lot. Staff was asked to coordinate with the lot owner, but the**
232 **item was not added to the motion. The motion passed 7-0, with the following roll-call vote:**

233 **Chair Earley, aye**

234 Vice Chair Mason, aye
235 Mr. Monson, aye
236 Mr. Rounds, aye
237 Mr. Carpenter, aye
238 Mr. Spalinger, aye
239 Mr. Breton, aye

240
241
242 Mr. Rounds made a motion to grant the waiver of 730.1.1, because this is an existing lot that is
243 already in use. Mr. Monson seconded the motion. The motion passed, 7-0, with the following roll call
244 vote:

245 Chair Earley, aye
246 Vice Chair Mason, aye
247 Mr. Monson, aye
248 Mr. Rounds, aye
249 Mr. Carpenter, aye
250 Mr. Spalinger, aye
251 Mr. Breton, aye

252
253
254 **New/Old**

255
256 Mr. Monson said the septic maintenance requirement the board had discussed previously was going
257 before the Board of Selectmen to be considered as a health code issue. He was asking for board support.
258 Mr. Mello said the requirement would be that residents around the pond would need to show that they
259 had cleaned their septic systems every two or three years. He said there was some enforcement concerns.
260 Mr. Mello said the town of Rye had enacted a similar measure three years ago. This past March Rye sent
261 over a hundred non-compliance letters to residents regarding this issue. The part-time position that was
262 charged with enforcing this had been turned into a full-time position. Mr. Carpenter applauded the
263 objective but thought as a private landowner it could be problematic. Mr. Carpenter mentioned assessing
264 impact fees and just hiring a commercial company to pump them all at the same time. Chair Earley said it
265 was a limited ecosystem and they were looking to protect what is classified as a threatened waterbody. He
266 said this would be enforcing a requirement and responsibility that the impacted homeowners should
267 already be doing. Vice Chair Mason and Mr. Spalinger both questioned the costs involved with tracking and
268 enforcing this proposal. Chair Earley thought most of this could be automated but agreed that the problem
269 came when trying to put teeth behind the measure. There would be a need for partnering with the Board of
270 Selectmen in order to create fines and penalties. Ms. McCarthy asked how many homeowners were not
271 maintaining their septic systems as needed. Mr. Monson that wasn't known. Mr. Mello said in his time in
272 town there had been three septic failures. He did have concerns with the administration of this program
273 being a burden on the department. Mr. Mello confirmed that the concept was legal, but he thought it
274 might need to be codified by town warrant or initiated by the building inspector.

275 Chair Earley said Cobbett's Pond is the only threatened waterbody in Windham and that the EPA
276 has it listed at a critical level. Mr. Rounds said when the pond reached a certain level there is no return. Mr.
277 Monson said the pond was already approaching this point. Mr. Monson said water quality has steadily
278 declined since tracking was begun in 1988. Mr. Monson said Cobbett's Pond is used as an example to other
279 towns of what not to do.

280
281 **Mr. Rounds made a motion to write a letter in support of the proposal. Mr. Carpenter seconded**

282 the motion. Vice Chair Mason said she wanted it on the record that she was against this measure and Ms.
283 McCarthy concurred. Mr. Carpenter said he didn't think this was the end game, but he hoped that this
284 letter created a sense of urgency and might help the Board of Selectmen take the matter more seriously.
285 The motion passed, 5-2, with the following roll call vote:

286 Chair Earley, aye
287 Vice Chair Mason, opposed
288 Mr. Monson, aye
289 Mr. Rounds, aye
290 Mr. Carpenter, aye
291 Mr. Spalinger, opposed
292 Mr. Breton, aye
293
294

295 Mr. Rounds suggested that the board begin drafting their chapters of the Master Plan. It was added
296 to the workshop next week, along with the presentation of newly proposed application forms.
297

298 Mr. Carpenter made a motion to go into non-public session per RSA 91-A:3, II (c). Vice Chair
299 Mason seconded the motion. The motion passed, 7-0, with the following roll call vote:

300 Chair Earley, aye
301 Vice Chair Mason, opposed
302 Mr. Monson, aye
303 Mr. Rounds, aye
304 Mr. Carpenter, aye
305 Mr. Spalinger, opposed
306 Mr. Breton, aye
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