

**CITY OF KEENE
NEW HAMPSHIRE**

**PLANNING BOARD
MEETING MINUTES**

Monday, March 28, 2016

6:30 PM

Council Chambers

Members Present

Gary Spykman, Chairman
Nathaniel Stout, Vice-Chair
Mayor Kendall Lane
Douglas Barrett
Andrew Bohannon
Christine Weeks
George Hansel, Councilor
Chris Cusack

Staff:

Rhett Lamb, Planning Director
Tara Kessler, Planner
Michele Chalice, Planner

Members Not Present:

Pamela Russell Slack
James Duffy, Alternate
Tammy Adams, Alternate

I. Call to order – Roll Call

Chair Spykman called the meeting to order at 6:30 PM and a roll call was taken.

II. Minutes of previous meeting – February 22, 2016

A motion was made by Mayor Kendall Lane to accept the February 22, 2016 minutes. The motion was seconded by George Hansel and was unanimously approved.

III. Waiver Request

1. The Keene Public Library Board of Trustee's requests a waiver from the Planning Board Site Plan & Subdivision Regulations Section IV. Submission and Procedural Requirements Subsection D.1.d) "Compliance with Zoning: Compliance with all applicable sections of the Zoning Ordinance and City Code shall be demonstrated by the applicant before an application can be noticed for review by the Planning Board."

Christine Weeks and Nathaniel Stout were recused from this hearing because of their association with the Library.

Library Trustee, Paul Henkel addressed the Board first and stated the Library has submitted a site plan application for the proposed renovations to the library and annex buildings. He stated the city is currently in the process of reviewing a request to rezone the library annex property from the Office Zone to the Central Business District, and until the zoning is changed, the library application does not meet the submission requirements of the Board's Site Plan and Subdivision requirements. He indicated their thought was the request for rezoning would be made on April 21st at the City Council meeting. However, the notice for the April Planning Board meeting needs to be posted on April 14th and this would not meet the submission requirement deadline the application requires. Mr. Henkel stated a waiver from this section of the regulations will

permit their application to be reviewed on April 25th provided City Council approves the proposed zoning changes on April 21st. If the Council does not approve the zoning change, the applicant understands this item will have to be rescheduled for a later time.

Mr. Henkel stated the request is merely for a waiver from the submission requirements not from a specific development standard requests the Board consider this waiver request.

Chair Spykman asked for comments from staff. Planner, Tara Kessler stated this is a unique request and is merely a waiver from the submission requirement. As Mr. Henkel noted if the zoning is not in compliance by the public hearing on April 25th, the application will not move forward on that date.

Mayor Lane stated his understanding was the applicant had to be in compliance as of the date of the public hearing but what he is hearing today is they have to be in compliance as of the submission date. Ms. Kessler agreed an applicant has to be in compliance as of the day of notice which is ten days prior to a meeting date.

A motion was made by Mayor Kendall Lane that the Planning Board grant the waiver from the submission requirement and that the applicant is in compliance as of the date of the notice as long as they are in compliance of the date of the Planning Board meeting on April 25th. The motion was seconded by George Hansel.

The Chair asked for public comment. With no comments from the public the motion made by the Mayor carried on a unanimous vote.

IV. Continued Public Hearings

1. SPR-04-14, Modification 6 – Talons Restaurant – 141 Winchester Street – Site Plan – Applicant Katie Cassidy Sutherland, Architect, on behalf of owners 141 Winchester St, LLC, proposes an 80-seat restaurant. The primary proposed use is a 4,000SF restaurant with a 450SF accessory indoor recreation area with pool table and video games, and a 500SF accessory bar service. The site is 0.29 acres in size and located in the Commerce Zoning District (TMP# 052-02-004). The applicant has requested the Planning Board consider an additional extension of the 65-day time period for the Board to act as required by NH RSA 676:4.

Nathaniel Stout and Christine Weeks rejoined the Board.

Mr. Lamb referred to page 10 of the Board's packet to a letter from Attorney Dowd. Mr. Lamb reminded the Board of the referral the Planning Board made to the Zoning Board of Adjustment (ZBA) – the ZBA over-turned the opinion of the Zoning Administrator thereby making the application non-compliant on the issue of parking. In speaking with Attorney Dowd they have submitted a request for a rehearing to the ZBA and they intend to do that in May. As a result the applicant has asked for a 90-day extension which will place this application on the June agenda for the Planning Board.

Mayor Lane noted if the applicant's request for a rehearing is denied their next option would be to go before the Superior Court. The Mayor asked at what point the Board would ask the applicant to restart the entire process. Mr. Lamb felt the June meeting might be a time when the City Attorney could be asked to weigh in on this issue. He added an appeal would stop the process indefinitely. The applicant will also be filing for a variance if the rehearing is not

successful. Vice-Chair Stout stated he had seen the agenda for next month's ZBA meeting and there is nothing on that agenda regarding a rehearing so the next time the applicant is likely to be before the Zoning Board would be in May. Mr. Lamb stated what he has heard from Attorney Dowd who has said they would be requesting a rehearing in May and the hearing itself wouldn't happen until June.

Ms. Weeks clarified the Board has already granted this application an extension. Mr. Lamb stated they were granted a 60 day extension in January which extended their time through March. Chair Spykman stated the number of extensions granted is up to the Board's discretion. Ms. Weeks asked whether the Planning Department has a recommendation on this item. Mr. Lamb stated the ZBA review was because of the Planning Board's recommendation he would suggest the Board provide the applicant the time to carry through the application and any subsequent appeal. Mr. Lamb recommended that the extension be granted. Mr. Lamb stated the Board's motion should be to continue the public hearing to the June meeting and to also extend the decision deadline. Mayor Lane stated it should be made very clear when granting the extension that this extension is for them to go through the administrative process but it is not an extension that would allow them to continue on to the Superior Court. He didn't feel if the applicant was not successful in the administrative process they should be granted anymore extensions.

A motion was made by Mayor Kendall Lane that the Planning Board continue this application to the June 27 Planning Board meeting and also extend its decision deadline to that date. The motion was seconded by George Hansel.

Mr. Cusack asked to be recused from the vote due to a prior statement his employer has made on this matter. Mr. Cusack was recused from the vote.

The motion made by the Mayor was unanimously approved.

2. **SPR-01-16 – 17 Washington Street – Site Plan** - Applicant, Igor Monteiro, on behalf of owner, MDP Development LLC, is proposing to use the recreation field at 17 Washington Street for a youth soccer program. The applicant is seeking a waiver from the Planning Board's Development Standard #10 Lighting (Tax Parcel #017-07-007).

This matter was accepted as complete last month.

A. **Public Hearing**

Applicant, Igor Monteiro addressed the Board and stated he had just heard from his attorney that he will not be present at today's meeting as he has been taken ill. Mr. Monteiro stated his request was to install lights on the old Middle School field and locate "porta potties" in the parking lot. He indicated the kids who play in this program also participate on varsity teams and the league does not want to interfere with Keene High School so they are suggesting the practice time be a little later in the day and hence the need for lights on the field. Mr. Monteiro noted their lights won't be on after 9:30 pm and on weekends not after 8 pm. They are also looking at "porta potties" in the parking lot and banners promoting their program around the fence.

Ms. Weeks felt this was a good idea to get children out. She however, expressed concern about vandalism to the porta potties and asked whether they would be locked. Mr. Monteiro answered in the affirmative. She also asked about hand sanitizers. Mr. Monteiro stated they will be contacting the company from where they will be obtaining these "porta potties" regarding these issues. Ms. Weeks asked whether the "porta potties" could be located within the chain link fence

area and be unlocked when the fields are being used. Mr. Monteiro stated they plan on taking down a part of this fencing for access to the parking lot but stated it certainly can be put around these structures. Ms. Weeks asked whether these would be serviced regularly. Mr. Monteiro stated they will be working with the Health Department on this.

Mr. Bohannon asked whether the banners will be facing toward the field and not the street. Mr. Monteiro stated the banners representing the soccer club will face the street; however, any other banners will face toward the field. Mr. Monteiro noted that he intends to follow all applicable sign codes and standards.

Mr. Cusack referred to page 19 of the staff report which refer to the light towers “...it is not possible to fully shield the fixtures...” but on pages 23 and 26 the applicant says the light fixtures will be shielded to make sure the extra lights will not go towards the abutters and asked how the Board can make sure there will be no light trespass on abutting properties. Mr. Monteiro stated this is something else they will seek professional advice on. Mr. Cusack asked if there was light trespass whether there was recourse for the abutters. Chair Spykman stated there is always follow-up for violations.

Vice-Chair Stout noted there was a substantial area to the south which was not a playing field and asked whether this area is not going to be leased by the applicant. Mr. Monteiro stated they are leasing just the fields and the parking lot – all areas within the fence will be leased.

Staff comments were next.

Ms. Kessler stated the applicant is requesting use of these fields on a temporary basis (April – November). The applicant is requesting four temporary light fixtures to be placed on four corners of the playing field. She stated as mentioned there will also be temporary “porta potties” and a dumpster at the rear of the site. They are also looking for use of the parking lot adjacent to the field, but the challenge with this site is traffic travelling over this site would have to travel over city property and there has been a request from City Council to pass and repass that parking area at 41 Spring Street. This request from the applicant has been approved by the Council. There has been an additional request for use of this site and that is currently under review as to how many spaces they would need.

Ms. Kessler went on to say because this is a temporary recreational use there will be no change to drainage. Snow storage is not applicable because the use is from April through November. Landscaping, applicant has indicated they will be responsible for mowing and maintaining the fields. Noise will not be an issue as the field is going to be used mostly between 5:30 pm and 8:30 pm during the week days and during the weekend starting at 8 am until the early evening hours. Screening – the dumpster and the toilets should be mostly out of sight from the public right of way.

Ms. Kessler stated the biggest issue is lighting for which the applicant has requested a waiver from the lighting standards. Ms. Kessler stated the Board’s standards don’t address this type of lighting and does require fully shielded fixtures. In this instance, it is a light tower and the sole purpose is to light a playing field. Ms. Kessler noted to what Dr. Cusack had referred to in that there is a discrepancy between the staff report and the applicant’s letter which the applicant has agreed to do as much as they can to reduce the glare onto neighboring properties but noted the applicant will not be able to fully meet the Board’s standard of fully shielding the light tower.

Traffic – the applicant has noted they would be conducting two practices four days a week with about 50 vehicle trips dropping off and picking up children and the same amount of traffic generated on the weekends.

For the standard related to Comprehensive Access Management, the field is located in the downtown and is located in close proximity to the City Express and other downtown locations and can be easily accessed by foot or bicycle.

Ms. Kessler went on to say there are no impacts to surface waters or wetlands with this application. There is also a fence that has fallen down and the applicant has said they will be fixing same.

Ms. Weeks asked who utilizes the City of Keene parking lot. Ms. Kessler stated about ten spaces are used by City employees between the time periods of 8 am to 5:30 pm and is used sporadically by the Fire Department for training and as overflow parking.

Chair Spykman noted the diesel generators will need to be refueled occasionally and asked whether there could be any issues with this. Ms. Kessler stated these generators will be stored off site but added she could not address the contamination which could occur during refueling. Mr. Lamb stated Standard 14 deals with existing conditions and does not address the use of the property or the refueling which will be addressed through the Fire Code or a state agency and stated this line of discussion is outside of the Board's authority.

The Chair asked for public comment.

Mr. William Beauregard stated he owns property immediately east of this property at 28-30 Roxbury Court, and 38 Spring Street as well as properties on 63 and 64 Spring Street. Mr. Beauregard stated his contention is that the Planning Board is proceeding tonight on a seriously flawed ZBA decision; ZBA 16-02. He noted 15 properties did not receive notice regarding the ZBA meeting on January 4, 2016. Attorney Davis did send out letters requesting abutters waive their right to the statutorily required legal notice which he noted was admirable but in all his years on the Planning Board and Council he has never seen such a maneuver to clear up a flawed notice. Mr. Beauregard stated if the Board was to continue with this matter tonight the discussion would be based on the foundation of a fatally flawed decision. He hoped the Board would use caution and refer this matter back to the Zoning Board for a properly noticed hearing.

Ms. Weeks asked whether the ZBA decision has been appealed. Chair Spykman stated the decision was granted but what was discovered was the noticing was flawed. As a result it leaves that decision open to appeal. Mayor Lane added notice is a condition of precedent before any action can be taken and asked staff about this notice issue. Ms. Kessler stated this meeting is being held for this application with the understanding it meets the zoning requirements and not having surety that it might or an issue with the process prior to this application coming before this Board, it might be prudent to withhold decision.

Mayor Lane asked whether anyone has confirmation the notice was defective. Ms. Kessler stated the attorney representing the applicant had sent out a letter seeking a waiver of that notice from the abutters. Mayor Lane noted when something similar occurred on Court Street the problem was corrected with a notice similar to this and it is a process that has been followed. The Mayor asked whether releases from the abutters have been returned. Ms. Kessler answered in the negative. The Mayor stated he is disappointed the Board is just been advised of this issue and if

Mr. Beauregard had not come before the Board, the Board would not have learned about this flaw. Mr. Lamb stated the Planning Department does not administer the ZBA process. He indicated when the Planning Board notice was flawed at the February meeting, staff contacted the applicant so it could be corrected for the March meeting. Staff was also aware the same abutter list was used for the January Zoning Board meeting. Absent the abutter raising this issue tonight, staff was moving forward with the assumption it could be corrected through a process identified today or if it could not be corrected that a member of the public would reveal that flaw. He added that staff could not take on this responsibility because staff does not have the same type of standing as an abutter would. Because the matter has been brought to the attention of the Board, staff recommends the Board stop the process and wait until the zoning issue is resolved.

Ms. Weeks stated her question remains as to whether the ZBA decision was appealed. The answer was in the negative. Ms. Weeks stated the reason she is asking this question is because this applicant wants to start his league in April and it is now end of March. The ZBA decision happened in January and felt the city was not doing its due diligence. Mr. Lamb stated it is up to the applicant to provide to the Planning Board and Zoning Board an accurate abutter list and the city's responsibility is only to mail the letters. When the City became aware of the flaw, at the Planning Board level the meeting was re-noticed. The ZBA meeting having occurred, staff had no control over that nor does staff have any control over whether abutters will come forward with an appeal. He felt staff did the best it could under the circumstances.

Ms. Weeks asked who is required to receive the letter; the owner of the property or the tenant. Mr. Lamb stated it is mailed to the owner. She asked whether Mr. Beauregard did not receive mailings for any of his properties. Mr. Lamb stated that it has been indicated that Mr. Beauregard had not received notice for two of his properties for the ZBA public hearing, but there were others who did not receive notice as well. He added that the list for tonight's meeting was a corrected list.

Mayor Lane stated the issue the Board has is the notice to the ZBA is a condition precedent prior to the ZBA having any authority to act. Failing to give proper notice could cause a decision to be appealed up to 50 years; it is not subject to the 30-day appeal requirement. The second issue is the compliance with zoning, which is condition precedent to any action by the Planning Board and the Planning Board cannot act until the Board is assured the applicant has achieved appropriate zoning requirements. The Mayor stated he was concerned staff knew about this but never informed the Board about same. He stated for tonight the Board has no choice but to continue this matter.

A motion was made by Mayor Lane to continue this application to the April 25 meeting. The motion was seconded by George Hansel.

Vice-Chair Stout stated there is nothing on the ZBA agenda for May regarding this application and he added didn't know if this item can be brought up at that meeting. Mayor Lane stated it probably cannot be addressed unless Attorney Davis can file the waivers, which would be an administrative process. However, if he can't, he will have to wait until May.

Councilor Hansel stated we have a young man who wants to start a business but has very limited options and wasn't sure where the blame falls for this administrative error. He encouraged staff to help him out in any way possible.

Mr. Monteiro stated he didn't know about this error until the last Planning Board meeting. He added the dates he is permitted to practice are set by the league. He added most of his players travel all the way to Rindge for practice due to the lack of space in Keene and asked if there was any way he could start the program without the use of lights until this issue with the lights are resolved. He added there are already 75 families in this program. Mr. Monteiro stated any delay could cause the program to be shut down or moved to a different town.

Chair Spykman stated unfortunately this matter has been taken out of the hands of the Planning Board. He stated this Board cannot act until the Zoning Board has voted and because of the flawed notice the determination made by the Zoning Board is not a valid determination. He stated there are members of this Board who sympathize with him and stated the best option for Mr. Monteiro would be to make sure the abutters sign the waivers sent to them by Attorney Davis; if that happens the matter can go forward.

Ms. Weeks asked if the applicant was to drop the request for lighting whether the matter could go forward. Ms. Kessler stated the reason this matter came before the Board even though this is a temporary use is because of the lighting issue. Without the lighting it would have been an administrative review. Ms. Weeks felt if the applicant was in agreement with certain changes the program could be started until the lighting issue is resolved. Mr. Lamb agreed if the lighting was removed it could be handled administratively. However, the change of use through the ZBA still exists and the quick path to using the property would rely on the waivers being signed. Mr. Barrett asked whether the applicant could withdraw the application for the lighting waiver to move this matter forward. Mr. Lamb stated they could.

Chair Spykman asked whether a conditional approval work in a situation like this. Mr. Lamb referred to the following language which refers to compliance with zoning "*...compliance with all applicable sections of the zoning ordinance and city code shall be demonstrated by the applicant before an application can be noticed for review by the Planning Board...*" he felt it is clear as to the question of whether this use is allowed or not as matter of right or by grant of a variance or special exception needs to be cleared before the Board moves forward.

Vice-Chair Stout asked whether the Planning Board could act in some official capacity to notify the ZBA that it take all possible steps to expedite this item. Mr. Lamb stated the Planning Board has conducted special meetings and ZBA could do the same. He stated further down in the section he was referring to earlier also says "*...the applicant may request a joint meeting of the Zoning Board of Adjustment and the Planning Board if the application requires issuance of a variance or special exception form the Zoning Board of Adjustment and a waiver from the Planning Board Site Plan Subdivision Regulations*".

Mr. Lamb stated both bodies would have to agree for this to happen; the Planning Board rules contemplate it but wasn't sure if the ZBA rules do.

Ms. Weeks recalled the Board doing something similar where an application was heard at the Joint Meeting when time was of the essence. Mr. Lamb agreed that would work for the Planning Board side of it but the bigger issue rests with the ZBA and their willingness to participate in a special meeting. Vice-Chair Stout suggested holding special meeting between the ZBA and Planning Board at the earliest possible time to try and help this applicant with a program that is very important to the City of Keene. He felt it would be ironic if the City's bureaucratic procedures killed a very promising program.

The motion made by Mayor Kendall Lane to continue this matter to the April 25 Planning Board meeting was withdrawn. Councilor Hansel withdrew his second.

A motion was made by Nathaniel Stout that a special meeting between the ZBA and Planning Board be scheduled on April 11, 2016 at 5:30 p.m.. The motion was seconded by Mayor Kendall Lane and was unanimously approved.

Mr. Lamb stated he would check with the ZBA as to whether this would be an acceptable date. If it is not, the item will need to be re-advertised and notices to abutters will need to be sent.

The Chair asked for additional public comment. Mr. Beauregard stated his concern is that the process is sustainable and the neighborhood does have some concerns about the project which could be addressed. He stated he appreciated the willingness of the Board to expeditiously bring this item back before the Zoning Board.

V. **Boundary Line Adjustment**

1. **S-01-16 – 809/815 Court Street – Boundary Line Adjustment** – Applicant Brickstone Land Use Consultants, LLC on behalf of owner Ashuelot River Realty, Inc. is proposing a new boundary line to correct one building being on the property line. The 809 Court St. site is 1.78 acres in size, and 815 Court St. site is 2.39 acres in size and both located in the Commerce Zoning District (TMP#s 188-01-001 and 188-01-004).

A. **Board Determination of Completeness**

Planner Michele Chalice recommended to the Board that Application S-01-16 was complete. A motion was made by Mayor Kendall Lane that the Board accept this application as complete. The motion was seconded by George Hansel and was unanimously approved.

B. **Public Hearing**

Mr. Jim Phippard referred to properties 809 Court Street and 815 Court Street. In 1986 a 20,000 square foot building was built on 809 Court Street but in error one corner of the building was built to extend over the adjacent property line. This error was not discovered until recently when a surveyor discovered the error as 809 Court Street is under contract. The land owners have agreed to a property line adjustment to correct this title flaw. Mr. Phippard stated before the Planning Board could act on this item, the applicant had to go before the Zoning Board to seek a variance to allow a setback less than 20 square feet on the north side of the property. The new property line location will allow the building to be set back approximately six to eight feet. There was a condition at the Zoning Board of Adjustment that the open enclosure of an egress door be removed. This has been done.

Staff comments were next. Ms. Chalice stated there is no associated work with this boundary line adjustment and have hence requested exemptions from all Planning Board requirements. There were no departmental concerns except for the one regarding the egress door which has been resolved.

C. Board Discussion and Action

A motion was made by Mayor Kendall that the Planning Board Approve S-01-16, as shown on the plan identified as ““Boundary Line Adjustment between lands of Ashuelot River Realty, Inc. (188-01-001) & 815 Court Street, LLC, (188-01-004)” 809 and 815 Court Street, Keene, NH, dated February 15th, 2016 at a scale of 1”=30’, stamped by Russell J. Huntley, NH and received by the Keene Planning Department on February 19th, 2016 with no conditions.

The motion was seconded by George Hansel and was unanimously approved.

VI. Planning Director Report

Mr. Lamb stated the site plan changes for the Brewery can be handled administratively. After quite a bit of work with Fairfields an administrative review approval was issued today. The Joint Committee is about to start the Marlboro Street zoning review. He stated the next zoning change would be to bring forward from the Historic District and Heritage Commission for a Historic District to be established between Route 101 (north) passed Keene State College.

VII. Upcoming dates of interest – April 2016

- Planning Board Meeting – Monday, April 25, 6:30 PM
- Planning Board Steering Committee – Tuesday, April 12, 5:30 PM
- Joint PB/ZBA – Monday, April 11, 5:30 PM
- Joint PB/PLD – Monday, April 11, 6:30 PM
- Planning Board Site Visits – Wednesday, April 20, 8:00 AM – to be confirmed

The meeting adjourned at 7:56 PM.

Respectfully submitted,

Krishni Pahl
Minute Taker

Reviewed by: Rhett Lamb, Planning Director