

**City of Keene**  
**New Hampshire**

**PLANNING BOARD**  
**MEETING MINUTES**

**Monday, May 24, 2021**

**6:30 PM**

**Council Chambers**

**Members Present:**

Pamela Russell Slack, Chair  
George S. Hansel, Mayor  
Michael J. Remy, Councilor  
Emily Lavigne-Bernier  
Roberta Mastrogiovanni  
Gail Somers

**Staff Present:**

Rhett Lamb, Asst. City Manager/Community  
Development Director  
Tara Kessler, Senior Planner  
Mari Brunner, Planner

**Members Not Present:**

David Orgaz, Vice Chair  
Andrew Weglinski  
Harold Farrington, Alternate  
Tammy Adams, Alternate

**I) Call to Order – Roll Call**

Chair Russell-Slack called the meeting to order at 6:30 pm and a roll call was taken.

**II) Minutes of Previous Meeting – April 26, 2021**

A motion was made by Mayor George Hansel to approve the April 26, 2021 meeting minutes. The motion was seconded by Gail Somers and was unanimously approved by roll call vote.

**III) Extension Request:**

**SPR-01-18, Modification #1 – Site Plan – 809 Court St – Owner and Applicant, Hillsborough Capital LLC, is requesting a one-year extension of the timeframe for achieving active and substantial development of the site plan for 809 Court Street for the demolition of the existing 19,943 sf building and the construction of a 28,800 square foot (sf) indoor athletic facility in its place. This is the second extension request for this site plan. The applicant is also requesting to continue to occupy the existing building as an athletic facility until the new building is constructed. The parcel is TMP# 219-005-000-000-000 and is located in the Commerce District.**

Mr. Steven Holland, applicant addressed the Board and stated they had been using this site at 809 Court Street in a temporary manner since November 2019 through February 2020 and were required to shut down due to the pandemic. He indicated the pandemic has set their business back, but they are still operating the athletic facility on a temporary basis. They are working on a detailed plan per the original site plan and need more time to complete it.

Chair Russell-Slack asked what kind of programs are being conducted at this time. Mr. Holland stated they are running a sports performance program, an obstacle course, ninja warrior training, they have a 45-yard turf field that runs down the center of the building, two batting cages (youth and adult), they have also been growing their adult fitness program significantly and have incorporated personalized fitness into their center.

Staff comments were next. Senior Planner Tara Kessler noted this is a second extension request and the applicant has noted their reasons for their request. She noted the extension request also has a request from the applicant to continue their operation through the timeframe it takes them to achieve active and substantial development of their site. Ms. Kessler went on to say that the current timeframe expires in June 2021 and the extension if granted today, gives them another year. She noted there is a possibility for the applicant to request a third extension but the regulations don't allow for more than three extensions and the criteria for granting a third can be difficult to meet. Ms. Kessler added if the applicant has exhausted all of their extension requests, the site plan granted in 2018 would no longer be valid and if they wish to move forward in the future they would have to re-apply for a site plan.

The Chair asked for public comment. With no comment from the public, the Chair closed the public hearing.

The Mayor stated even though these types of requests usually receive scrutiny, however, due to the pandemic it is causing delays and had no issue granting the applicant's request.

A motion was made by Mayor George Hansel that that Planning Board to extend the deadline for achieving active and substantial development of the site plan SPR 01-2018 for 809 Court Street (TMP# 219-005-000) for the demolition of the existing 19,943 sf building and the construction of a 28,800 square foot (sf) indoor athletic facility to June 17, 2022, and to permit the applicant to continue to occupy the existing building as an athletic facility until the new building is constructed.

The motion was seconded by Councilor Michael Remy and was unanimously approved by roll call vote.

#### **IV) Boundary Line Adjustment**

**S-03-21 – Boundary Line Adjustment – 510 Washington St & 0 Fox Ave – Applicant and owner Toby Tousley of 510 Washington St (TMP# 532-003-000), on behalf of owner Fox Trail Farm LLC of 0 Fox Ave (TMP# 519-037-000), proposes a boundary line adjustment between their two properties. The adjustment would result in a transfer of 2.4 ac from the 3.2 ac parcel located at 510 Washington St to the 15.8 ac parcel located at 0 Fox Ave. A waiver is requested from Sec. III.C.5.b of the**

**Planning Board Regulations regarding the requirement to submit a survey showing all metes and bounds of the revised parcels. The 510 Washington St property is located in the Commerce and Low Density Districts and the 0 Fox Ave property is located in the Rural District**

**A) Board Determination of Completeness**

Planner Mari Brunner stated the applicant has requested exemptions from submitting grading, landscaping, lighting plans and technical reports as no new development is proposed at this time. She indicated staff recommends granting the exemptions and accepting the application as complete. She further stated the applicant is also requesting a waiver from completing a full metes and bounds survey for the 50.8 acre parcel at Fox Avenue, which is required under the Board Regulations. Ms. Brunner stated the portion of the parcel at 0 Fox Avenue impacted by the proposed adjustment has been surveyed and is displayed on the submitted plans along with the complete metes and bounds for 510 Washington Street. She indicated that since this is a waiver request, the Board will need to open the public hearing first prior to a vote on the request.

A motion was made by Mayor George Hansel that the Planning Board accept this application as complete. The motion was seconded by Councilor Michael Remy and was unanimously approved by roll call vote.

**B) Public Hearing**

The Chair noted the Board will need to address the Waiver Request from Standard III. C.5.b. of the Site Plan and Subdivision Regulations to provide a metes and bounds survey for property located at 0 Fox Avenue TMP# 519-037-000. The Chair asked the applicant to address the waiver request.

Mr. Toby Tousley of 500 Washington Street addressed the Board and went over the waiver criteria for requesting a waiver.

a) *That granting the waiver will not be contrary to the spirit and intent of these regulations;*

Mr. Tousley stated an updated survey of the properties will be required if the lots involved were small and there was danger of one of the lots becoming non-conforming due to lot size or setbacks. In this case 0 Fox Avenue is 16 acres in size and there is no development being proposed at this time. Because of the large cost involved in surveying the parcel granting the waiver will not be contrary to the spirit and intent of these regulations. Mr. Tousley recalled a similar request on Wyman Road and for the Colonial Theater.

b) *That granting the waiver will not increase the potential for creating adverse impacts to abutters, the community or the environment;*

Mr. Tousley stated the area of the proposed boundary line adjustment will severely limit the ability of further development. Access from Washington Street will be limited to the existing retail area and there will be no further changes and thus granting the waiver will not increase the potential for creating adverse impacts to abutters, the community or the environment. He noted the portion being added onto Fox Avenue will have no direct access from Washington Street.

- c) *That granting the waiver has not been shown to diminish the property values of abutting properties.*

Mr. Tousley stated the area of the proposed boundary line adjustment will severely limit the ability of further development. Access from Washington Street will be limited to the existing retail area and there will be no further changes and thus granting the waiver will not diminish the property values of abutting properties.

- d) *Consideration will also be given to whether strict conformity with the regulations or Development Standards would pose an unnecessary hardship to the applicant.*

Mr. Tousley stated given the large cost of surveying the 16 acre parcel for this boundary line adjustment and such survey is not required for the Board's review - strict conformity with the regulations or Development Standards would pose an unnecessary hardship to the applicant.

A motion was made by Mayor George Hansel to grant the requested waiver from Standard III. C.5.b. of the Site Plan and Subdivision Regulations that all metes and bounds be surveyed for parcel at 0 Fox Avenue TMP# 519-037-000 for Boundary Line Adjustment S-03-21.

The motion was seconded by Councilor Michael Remy and was unanimously approved by roll call vote.

Mr. Tousley addressed the Board again with reference to a map and noted the locations of Washington Street, June Street and Fox Avenue. He indicated the portion of the lot along Washington St that he is looking to attach to the larger parcel at 0 Fox Ave. He also noted where he understood June Street to extend to the property at 0 Fox Ave and indicated there are two subdivisions signed by the Planning Board and recorded at the Cheshire County Registry of Deeds that show access to this property from June Street. He referred to the deed for the parcel at 0 Fox Ave that references two monuments at the end of June Street. He noted that the survey done in 1973, found those monuments still exist. Mr. Tousley stated he is not proposing any development or access to this property but would like confirmation this access exists.

Mr. Tousley indicated that a portion of the parcel along Washington St is located in the commerce zoning district but the rest is zoned residential. He felt removing the piece of the parcel in the residential zoning district from the parcel along Washington St would limit development of the parcel. He added the reason this property is in the commerce zone is because of a mini golf course, a use that existed on this site many years ago.

Mr. Tousley noted the wetlands and steep slopes that exist on this site, which he stated would prohibit him from being able to develop the parcel at 0 Fox Ave. He also noted this proposed adjustment would have no effect on zoning.

This concluded the applicant's comments.

Staff comment were next. Ms. Brunner stated engineering did provide comments on this application. Staff does not have an answer yet regarding the June Street access issue. She noted 0 Fox Avenue does not have frontage on a Class V Road and this boundary line adjustment would not change this condition if it were approved. However, if development is proposed in the future or if 0 Fox Avenue is subdivided in the future, at that time the owner of 0 Fox Avenue would have to demonstrate legal access from and frontage on a Class V Road.

Ms. Brunner noted there were public comments on this application which have been shared with the applicant and the Planning Board in advance of the meeting and those comments have also been placed in the project file.

Ms. Brunner reviewed the standards relevant to this application. Her review is summarized below.

Hillsides: Ms. Brunner noted that there appears to be some precautionary slopes present on the back portion of the 510 Washington Street parcel within the area of land that is proposed to be conveyed to 0 Fox Avenue; however, no steep slopes are present on the portion of this lot that would remain after the adjustment. In addition, both precautionary and prohibitive slopes appear to be present on the 0 Fox Avenue parcel. Since the size of the 0 Fox Avenue parcel would increase as a result of this proposal, the boundary line adjustment would not make the 0 Fox Avenue parcel non-conforming with respect to lot size. In addition, no development or site work is currently proposed on either parcel. This standard appears to be met.

Flooding: Neither parcel is located in the 100-year floodplain or the floodway.

Comprehensive Access Management: There are no changes proposed to the access for either parcel.

Wetlands & 17. Surface Waters: There are 17,757 sf of wetlands located on the back portion of the 510 Washington Street parcel within the area of land that is proposed to be transferred to 0 Fox Avenue. There will only be a very small area of wetlands remaining on the Washington Street parcel after the adjustment (146 sq ft). It is possible that some wetlands are located on the 0 Fox Avenue parcel as well. Because the size of the 0 Fox Avenue parcel would increase as a result of this proposal, the boundary line adjustment would not make the 0 Fox Avenue parcel non-conforming with respect to lot size after accounting for wetland/surface water area. In addition, no development or site work is currently proposed on either parcel. This standard appears to be met.

This concluded staff comments.

The Chair then asked for public comment.

Mr. Carter Chamberlain of 11 Fox Avenue addressed the Board and stated he heard mentioned that there is a portion of land at the end of Fox Avenue that is not taxed to anyone and wasn't sure if he heard that comment correctly. Ms. Brunner in response stated the city's online assessing map does not show Fox Avenue extending up to 0 Fox Avenue. She indicated more research is required to figure out who owns this land. Mr. Lamb added it is not uncommon for older subdivisions to have portions of road dedicated for road construction that were never built and could up in the situation as being described here.

Ms. Becky Kohler of 22 June Street was the next to address the Board. Ms. Kohler stated she had submitted comments to staff in advance of the meeting. Ms. Kohler went on to say that based on the documents shared by the applicant, it seems like the section the applicant anticipates access to 0 Fox Ave is through their property or what they believe to be their property. She stated she understands this is not an issue the Planning Board would address and the road currently does not exist as indicated on the applicant's map and wanted her comment documented. The Chair

clarified with the Community Development Director the public communication sent in would be made part of this application file. Mr. Lamb answered in the affirmative.

Ms. Kohler asked whether a metes and bounds survey would address this question and provide more information around access. Mr. Lamb stated a surveyor can identify the location of rights-of-way surrounding a property, which has been done, but a full metes and bounds will not resolve the question of whether access to 0 Fox Avenue exists on June Street.

With no further comment, the Chair closed the public hearing.

Mr. Tousley asked to address the Board again. The Chair reopened the public hearing

Mr. Tousley stated he would like to provide additional information on June Street. He indicated the information he has is based on lengthy work done by Attorney Bradley dating back many years ago. He also had an informal discussion with the Public Works Director and reviewed June Street and Fox Avenue. This portion of June Street was never used so is not a Class V road. He felt the Kohler property is being overly taxed on property they do not own. He stressed he has no intention of accessing June Street. Mr. Lamb in response stated, staff had spoken with the Public Works Director and Mr. Blomquist has the same information the Community Development Department staff has and agrees with the recommendation staff is providing tonight.

With no other comments, the Chair closed the public hearing again.

Councilor Remy noted the applicant had indicated using previously approved subdivision plans as a point of reference regarding June Street access and clarified that the Board at this time was not voting on whether June Street extends to the property at 0 Fox Ave.

Mr. Lamb in response clarified what the Councilor is asking is that the Board is not taking a position that the plan represents access from June Street. Councilor Remy agreed. Mr. Lamb indicated adding what the Councilor is saying will add clarification of the Board's intention. Mr. Lamb went on to say in his opinion, the Board is not taking a position with respect to access at all.

Mayor Hansel stated when he makes a motion he will not be adding any language about the access as he did not feel the Board had any purview over this issue and was not concerned about this being used as evidence for a decision on access.

### **C) Board Discussion and Action**

A motion was made by Mayor George Hansel that the Planning Board approve S-03-21, as shown on the plan entitled "Boundary Line Adjustment Plan Between Lands of Toby Tousley Tax Map Parcel No. 532-003, 510 Washington St., Keene, New Hampshire & Fox Trail Farm LLC Tax Map Parcel No. 519-037, 0 Fox Ave., Keene, New Hampshire" prepared by Huntley Survey and Design, PLLC at a scale of 1 inch = 40 feet on April 22, 2021 and last revised on May 3, 2021 with the following condition prior to signature by Planning Board Chair:

1. Owners' signatures appear on plan.

The motion was seconded by Councilor Michael Remy. The motion was unanimously approved by roll call vote.

**V) Community Development Director Report**

Mr. Lamb addressed the Board and stated staff has been working with the Steering Committee to set up some training opportunities. Mr. Lamb stated he appreciated members attending the training sessions offered by other agencies so far. He indicated he wanted to follow-up on discussion regarding the training as well as the newly adopted land use code. Ms. Kessler stated Board members will be receiving an email regarding topics they feel might be helpful as Keene Planning Board members.

**VI) New Business**

None

**VII) Upcoming Dates of Interest – May 2021**

- Planning Board Steering Committee – June 15, 11:00 AM
- Planning Board Site Visit – June 23, 8:00 AM – To Be Confirmed
- Planning Board Meeting – June 28, 6:30 PM

There being no further business, Chair Russell-Slack adjourned the meeting at 7:25 PM.

Respectfully submitted by,  
Krishni Pahl, Minute Taker

Reviewed and edited by,  
Tara Kessler, Senior Planner