

Town of Boscawen
Planning Board
Boscawen Municipal Complex
Meeting Minutes
Tuesday, September 12, 2017 at 7:00pm

Members Present: Roberta Witham – Chair, Matt Lampron, James Scrivens, Barbara Randall.

Member Absent: Bruce Crawford (recused himself as an abutter)

Alternate Members Present: Rhoda Hardy, Jeff Reardon

Member Ex-Officio Present: Bernie Davis, Ex-Officio

Alternate Ex-Officio Absent: Roger Sanborn.

Others Present: Alan Hardy, Planning & Community Development Director, Katie Phelps, Planning & Community Development Clerk, Kellee Jo Easler, Planning & Community Development Assistant & Recording Secretary

Chair, Bruce Crawford called the meeting to order at 7:02 pm.

Discussion ensued regarding the Public Notice brought to the Planning Board's attention by Chair Crawford with concerns of a rezoning discussion back from 2011. The attitude of the City of Concord is for rezoning the area by Exit 17. Chair Crawford's has concerns that a retail store will be allowed up to 75,000 sq. ft. and could definitely have a regional impact on us. Councilors Alan Hershlag and Brett Todd that Mr. Crawford spoke with said that they will be dealing with the traffic which will be a major part of this approval. Councilor Todd will be having a get together to discuss this further and it will be in October at some time but Chair Crawford said he will get the information to all Planning Board members. Director Hardy reaffirmed that the question of the Planning Board regarding the public notice, "Is it of regional impact?" Chair Crawford confirmed that is the question he has for the board. Chair Crawford discussed rumors of a Walmart coming into Concord, off Exit 17 being a possibility and he would like the Board to send a letter to the City of Concord to state that this is of Regional Impact so the Town of Boscawen will be notified in any future discussion. Chair Crawford asked Director Hardy for his take on regional impact and Director Hardy said there would need to be an affirmative vote of the Board to move on this.

James Scrivens made a motion to send a letter to the City of Concord to declare the zoning change described in the City of Concord's Public Notice, to be held on 09.20.17, to be of Regional Impact. Matt Lampron, 2nd, all in favor, motion passes.

Chair Crawford then discussed OEP name change to OSI. He would also like to make others aware of the NHMA Law Lecture Series, changing from 3 nights to 1 full day. Staff will send out reminders to all Boards and Commissions.

Bruce Crawford then turned over the meeting Roberta Witham at 7:27pm.

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Chair Witham welcomed the public and reopened the Public Hearing for the continuation of Dollar General Site Plan Review Hearing.

Chair Witham then asked Planning & Community Development Director Hardy to present the information we have thus far and the availability of the information in our office during normal business hours, on the website or digitally by providing a new USB drive that staff can download for the public. This is pertaining to questions the public had previously about acquiring information from past meetings and hearings.

Chair Witham asked Director Hardy to discuss information from Underwood Engineers (UE) regarding WB50 and Reference Standards and Local Application:

Reference Standards

The AASHTO "Green Book" which is a national policy manual on roadway design is used as a resource. The NHDOT Highway Design Manual also relies on the Green Book including design vehicle turning movements.

- Designs should consider the largest design vehicle likely to use the facility with considerable frequency.
- AASHTO and NHDOT recognize both WB-50 (Intermediate Semitrailer – 43') and WB-67 (Interstate Semitrailer – 53') design vehicles
- The WB-50 trailers are commonly used and is the typical design vehicle specified in the NHDOT Highway Design Manual
- The WB-67 is generally the minimum size design vehicle used for intersections on state highways and industrialized streets carrying high traffic volumes
- The WB-67 trailers are allowed only on select highways (NH Interstate and approved access routes between the Interstate and terminal service facility). The NHDOT Highway Design Manual gives preference to the WB-67 trailer design vehicle for intersections in proximity to an Interstate Highway.
- The NHDOT Policy Manual for Permitting Driveways references the WB-62 (Interstate Semitrailer – 48') which is also recognized by AASHTO and NHDOT Highway Design Manual

Local Application

- Dollar General should be identifying their most commonly used truck size and the largest truck that can be expected for deliveries to the site.
- If the site will accommodate the WB-67 (as shown on the template diagrams provided by the Applicant), then a WB-50 will also be able to access the site.
- We have not seen any templates for the WB-50 turn movements at the proposed site and although the smaller truck may have better maneuverability, parking spaces may still be impacted during deliveries. This possibility was addressed in Comment 5.a of our 2nd review letter. Clarification by Ben Dryer of Underwood Engineers as requested.

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Chair Witham asked if the Planning Board has any questions regarding this information and there were none.

Chair Witham confirmed they would stop this evening at 9pm as we had the prior meeting and we will be limiting everyone's comments and testimony to five minutes. Chair Witham stated that they would take the speakers tonight in order of signing in from the last list, then go forward with tonight's sign in sheet;

- Ed Maloof, non-abutter, 55 DW Hwy, opposed, not speaking
- Linda Maloof, non-abutter, 55 DW Hwy, opposed, not speaking
- *1st speaker*, Brian Fleury, non-abutter, 7 Lew Alice Drive, opposed, speaking. Mr. Fleury would like to suggest a traffic study.
- *2nd speaker*, Hank Amsden, 5 Wilfred Avenue Concord, non-abutter, speaking. Mr. Amsden, was retained by Clow & Newcomb and presented exhibits to the Planning Board. Mr. Amsden surveyed an abutting lot back in 1982, address of 171 King St, Map 41. He said there were five monuments when he left it in 82. Some plans show the fence on the same side as the Dollar General side. The abutters believe bounds have been moved. When the Dollar General applicants had 169 King St, Map 81A, Lot 42 surveyed in 2016, they had it done by a licensed land surveyor in NH who signed the plan. Of the 5 monuments shown in 1982, Dollar General found only 2. Both Mr. Newcomb and Ms. Clow want to know where their corners are. Mr. Amsden showed an Underwood Engineer plan as an example and contacted both their office and the office of Web Stout for research information. He discussed at length how to seek information from local surveyors regarding monumentation. Mr. Amsden stated that as a licensed surveyor he finds corners and puts his seal on the plan. If he cannot find corners, that is as far as he can go. He would like to see the plans resolved between the abutting property owners. Director Hardy asked Mr. Amsden, "What would happen if two property owners and their surveyors cannot agree? What should happen? Do they involve the town/city in the case or is it a dispute settled between parties?" Mr. Amsden stated to the Planning Board that if there is a boundary disagreement, such as here, it gets settled between the parties, not the Town or City.
- *3rd speaker*, David LeFevre, Attorney for Clow & Newcomb. Speaking. Atty LeFevre began by stating that if there is a dispute with the property, he believes the Planning Board needs to withdraw the plan. Atty LeFevre requested more time than the 5 minute limitation for his presentation. Chair Witham allowed extra time for Atty LeFevre. He began by introducing himself and his experience with his local Zoning Board. Atty LeFevre talked about the items Mr. Hardy raised at the last meeting. He got the impression that the Planning Board felt rushed and did not have enough time to make good decisions. He proceeded to explain the process and that the Planning Board does not have to be rushed and can make the Applicant wait. Atty LeFevre stated that it is the Planning Board's obligation to do their due diligence, not Mr. Hardy. They do not have to do what Mr. Hardy says. The Planning Board does not have to approve the plan, and

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he is going to give the Planning Board a wealth of items of why they do not need to approve the plan. The abutters want the Planning Board to provide them with a representative of Dollar General to be at the hearing to answer questions. Beginning of the last hearing Mr. Hardy made statements relative to Zoning Issues. Mr. Hardy stated that the issues have been decided and due to no appeals, then the issues are no longer applicable. Atty LeFevre referred to the constitution and that due process needs to be addressed. He continued, to explain the process of due process. Notice and an opportunity to be heard, meaningful. The 3 variances he speaks to, with an administrative opinion by Director Hardy, neither of the abutters received the information, although there are ZBA minutes for all of the ZBA meetings, the abutters were never allowed to speak at the hearings of the ZBA and that the abutters were never given notice. Atty LeFevre discussed proceedings from his ZBA meetings on how to deny a variance and what his town process is. Atty LeFevre said, these are questions you can ask Mr. Hardy, "Is any of this true? Did you send these to the abutters? Did you send out letters Mr. Hardy to the abutters?" Atty LeFevre wants the Planning Board to ask Mr. Hardy these questions and discuss conforming and non-conforming. He stated it is the Planning Board's job to ask these questions including the parking issues. He feels it is crystal clear in the Zoning Ordinance. Atty LeFevre does not think the Zoning Ordinance has been followed and the Code Enforcement Officer's process is incorrect in issuing Zoning Compliance Letters. Atty LeFevre does not think that allowing the 30day appeal process is correct and the Planning Board should override the process of the Zoning Board of Adjustment. Atty LeFevre has concerns with whether the Planning Board has looked at the Zoning Ordinance and to review the parking section for clarification. He does not feel the cars have access. He thinks the Planning Board should reject the plan even if the Planning Board buys the explanation. Atty continues to state that it is not just enough to hear a representation from town staff.

Time check was given by Chair Witham to Atty LeFevre after 25 minutes and let him know his time is coming to an end.

- Atty LeFevre objected and said you can tell him when to stop and he will state his objection that he had not had time to be heard. He will then tell a judge that he was trying to articulate the position of his clients and that the Planning Board did not give him enough time to be heard.

Chair Witham allowed further testimony.

- Atty LeFevre wanted to know who has read the Master Plan. Atty LeFevre continued to explain what the Master Plan is and what it is for. He found general overreaching themes specific to Boscawen. He does not feel the Dollar General building adheres to the Master Plan. Atty LeFevre would like the Planning Board to tell the applicant that the building/structure is entirely inconsistent with the Master Plan. Baseline should not look at Cumberland Farms, it should look like similar buildings around its area. Semitrailers and WB50, he cannot remember the NHDOT's supervisor's name, but NHDOT would not approve the plan for the WB67. Atty LeFevre will be happy to hand out the plans.

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Atty LeFevre does agree that the WB50 can deliver to the site, but not larger. He would like it to be a condition of approval. Atty LeFevre would like the Planning Board to ask a representative from Dollar General to see if they really are going to use the WB50's. Discussion ensued regarding hot spots and accidents around Routes 3 & 4. He would like the Planning Board to review this and look to local knowledge. Atty LeFevre handed out information from CNHRPC regarding the traffic and would like the Planning Board to review the results. Driveway information was discussed by Atty LeFevre with concerns for flares of the driveway affecting the abutter's driveway, on 171 King Street, a State Road. Discussion ensued and Atty LeFevre said that Town Driveway Standards be used on the property at 169 King St, which is a NH State Road. He continues to have issues with snow storage being taken off site and is requesting a plan. Atty LeFevre raised concerns for Fire Safety and Fire Code. Fire separation should be 30 feet and discussed that when Elaine Clow's property gets developed, he feels that the abutters should split the difference and it should have to be 15 feet on both sides. The Planning Board should be looking forward to this, in the future. He would like this verified with an Engineer. Atty LeFevre submitted conditions of approval and ended his testimony at 8:24pm.

Chair Witham stated that Rhoda Hardy & Jeff Reardon were voting members this evening. Review and Acceptance of 08.29.17 Meeting's Minutes 8:25pm: Roberta Witham asked members of the board for a motion of acceptance for the minutes from 8.29.17. Motion to accept by Bernie, 2nd Barbara Randall, all in favor, minutes finalized as presented.

- 4th speaker, Stan Balch, non-abutter, 36 Weir Road, in support of. Mr. Balch is concerned that the length of time it takes to approve this application we will not be able to attract other businesses to town. Mr. Balch wants to know why they are looking to develop Elaine's property but oppose Dollar General. He wants the Planning Board to approve Dollar General so other businesses will come to town.
- 5th speaker, Bruce Crawford, abutter, 357 Queen St, opposed. Mr. Crawford handed out paperwork for the Planning Board. He discussed how Black Forest Nursery takes care to the intersection of Route 3 & 4 to make the Corridor inviting and how other local businesses assists with town activities. Winthrop Carter, Steve Brown, Electrisola and many more open their doors and contribute to town events. He does not think Dollar General will do the same or mow their grass. Mr. Crawford received information from Councilor Alan Hershlag, Ward 2 stating that Dollar General does not keep their landscaping maintained and had to be approached so the area was mowed but it did not take care of the issue completely. Councilor Hershlag is acting as a private citizen but he knows what doors to rattle to get things done. Mr. Crawford does not believe Dollar General will support things that go on within our town, driveway concerns and permit even though there, got through. Mr. Crawford handed out a Review of truck characteristics factors and roadway design by the National Cooperative Highway Research Program and Roadway report number 505 and he states that, "regardless of what Underwood Engineers or whoever came up with, this is from the people who wrote

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the book.” Passed out to Planning Board members. Mr. Crawford states that the WB50 is obsolete for all intents and purposes. Mr. Crawford said that Scott Looney from NHDOT Access Technician, stated “there may be a conflict with the Newcomb property and the Town of Boscawen’s buffer zone and it will be up to the Planning Board to reject this design.” Mr. Crawford said that whatever the Planning Board does that the WB 67 needs to be taken out and WB 50 used prior to the approval. The King Street location is one of the largest volume Cumberland Farms in the area. Mr. Crawford has done his own traffic counts at the Penacook Dollar General and that the parking is insufficient. He feels that many headed north will be coming to Dollar General just like Cumberland Farms. Mr. Crawford explained how many other vending trucks will delivery to Dollar General. Mr. Crawford stated that “just because they want it does not mean they need to get it.”

- 6th speaker Andrew Newcomb, abutter, 171 King St, opposed. Mr. Newcomb wanted to allow the applicant time to rebut prior to his testimony, due to the lateness of the time.

Time check, 8:41pm Recording Secretary asked if there was anyone else present who would like to speak that has not had a chance yet or this evening. No person asked to speak so Chair Witham allowed the Applicant to rebut comments.

- 7th speaker, Austin Turner, applicant. Addressing concerns of abutters and the public. Discussed survey and that it had been discussed with the ZBA and PB at length previously. It was verified with the surveyor that the boundaries that were located were correct and the surveyor certified such. It was shown that the lines are consistent with both plans used this evening and are accurate. Mr. Turner would be happy to discuss any questions with the Planning Board they may have regarding the survey for the property located at 169 King Street.

Chair Witham asked if anyone on the Planning Board has any questions or concerns for the applicant. Matt Lampron, asked for the record, “You are stating they did a full boundary survey off of the deeds, not off of two points.” Mr. Turner stated that the surveyor used information off the deeds and used the plans for their due diligence in determining the boundary. No further questions regarding the survey.

Austin Turner continued and discussed engagements with NHDOT and relative to what vehicles were used.

- The permit secured and NHDOT granted was based on WB67. Review the turning movements and approved. There was discussion amongst the board and the applicant agreed to use the WB50 for the site at 169 King Street.
- In regards to the driveway flare, by NHDOT standards are not allowed to go past the horizontal or vertical projected, it would not work. It has been designed and NHDOT does look at all issues and is not a point of discussion because it is not close enough to warrant a further look.

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- When a vehicle is exiting the property it cannot come into the oncoming lane. Approval by NHDOT did not require the use of the oncoming lane, therefore it would not have been allowed.
- In regards to Atty LeFevre's comments of interactions with the ZBA and decisions made and that information was not made available or done in secrecy. Minutes will document that individuals were in fact present at the meetings and made testimony at the hearings and will reflect that they were at all of the hearings, therefore receiving the information.
- Last discussion in April was providing snow removal. Grading was designed so not to disturb the landscape and certainly they can excavate the back area to make snow storage available. At the time, the Planning Board did not want to flatten out a spot for snow storage but agreed for off-site removal instead.
- Fire code item cannot be spoken to by the applicant because it was not raised earlier. The building is in compliance with the local and state code, which has been previously approved and reviewed by the Life Safety Officer, Fire Chief and Building Official.
- Truck movements were discussed and the applicant has agreed to restrict the delivery hours and loading/unloading of the trucks. The turning movements shown to both the ZBA and the PB throughout the last 8+ meetings that they will not restrict the parking areas.

With no other questions for the applicant, Applicant finalized his presentation of rebuttal.

Chair Witham, extended the testimony to 9:15pm this evening.

- 8th speaker, Andrew Newcomb, abutter, 171 King St, opposed. Mr. Newcomb does not much enjoy speaking after Mr. Turner, but feels compelled. Mr. Newcomb said that "Mr. Turner stated the driveway permit as submitted had no issues." Mr. Newcomb said that, "Scott Looney, Driveway Technician, for the NHDOT who personally reviewed the plans said that as a state employee it is free information to the public." Mr. Newcomb stated that Mr. Looney said, "The current plan annexed 8-10 ft. of his driveway, which of course abutted the setback and he kicked it back. Mr. Looney said you cannot do that, it is an abutter's driveway. Mr. Looney said, "It is his job to catch things that are thrown into the air and catch it." Mr. Newcomb wishes he was sworn in and Mr. Turner as well. Mr. Newcomb discussed snow coverage and impervious surfaces and would like a Dollar General Representative looking him in the eye to discuss these issues.
- 9th, David LeFevre, Attorney for Clow & Newcomb, speaking for a 2nd time with permission by Chair Witham, to finalize by 9:15pm. He submitted NHDOT driveway plans, for clarification purposes. It is the worst planning he has ever seen and does not think that the NHDOT plans are approvable. Atty spoke about the monumentation and the need to flag the fire code as an issue and the Planning Board needs to look into that with the Fire Chief. He just wanted to clarify final issues.

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Chair Witham asked if anyone had any other issues or would like to speak. Hearing no other objections, she asked for a motion.

Motion to close the public hearing made by Rhoda Hardy, 2nd by Jim Scrivens, all in favor, motion carried.

Chair Witham, stated that we will continue the meeting to Tuesday, October 3rd at 6:30pm, to our regular Planning Board Meeting night.

Motion to adjourn made by Barbara Randall, 2nd by Bernard Davis, Jr., all in favor, motion carried.

Respectfully submitted,

Kellee Jo Easler
Recording Secretary