

Town of Boscawen
Planning Board
Boscawen Municipal Complex
Meeting Minutes
Tuesday, August 29, 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, Jr., 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

Chairman Witham called the meeting to order at 7:07 pm.

Roll call made by recording secretary. Rhoda Hardy & Jeff Reardon are voting members this evening.

Review and Acceptance of 08.08.17 Meeting's Minutes 7:12 pm: Roberta Witham asked members of the board for a motion of acceptance for the minutes from 8.08.17.

Bernard Davis, Jr., made a motion to finalize the minutes from 08.08.17 as presented, 2nd by Barbara Randall, all in favor, motion passed.

Chair Witham asked if everyone had signed up to speak tonight and stated we would be taking speakers in the order of the sign in sheet this evening, not from last meeting.

Chair Witham then asked Planning & Community Development Director Hardy to summarize where we are currently, with the ZBA decisions, if there have been any changes and what will transpire this evening.

Director Hardy's response: This meeting is continued from the meeting on Tuesday, August 8, 2017. These notes are intended to provide the Planning Board background regarding the Zoning Board of Adjustments decisions in regard to Boscawen DG, LLC. As a review, testimony and documents previously submitted by the Town's consultants, Boscawen DG, LLC, abutters and members of the public will remain part of the record of the Board. Schedule of Planning Issues to be heard at each meeting may be scheduled by the Planning Board as needed.

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- On May 16, 2016, Dollar General applied to the Boscawen Zoning Board of Adjustment (“the board”) for 3 variances relating to the construction of a 9,100 square foot building to be used as a retail operation with 30 parking spaces:
 - Variance #1 requested relief from the minimum lot size requirement of 80,000 sq. feet for commercial and industrial uses per Article V, Section 5.01.
 - On May 20, 2016, Alan Hardy issued a letter concluding that a variance from Article V was not required as this lot is a non-conforming lot governed by Article IX. Dollar General represented that in view of Alan’s letter, Dollar General would not pursue this variance request further.
 - The board voted on June 28, 2016 to accept Alan’s recommendation and Variance #1 was declared moot. (See June 28, 2016 Meeting Minutes, page 4).
 - Variance #2 requested relief from the Coverage Limits of Article 5.01 Table 2. The lot size was listed as 58,919 square feet with a required 40% maximum coverage for building and structures. The proposal however asked for 50% coverage.
 - The board denied this request noting that the proposed building was too large. (See June 28 ZBA minutes, page 5).
 - Variance # 3 requested relief from the required number of off-street parking spaces (Article VIII, 8.01). Dollar General was seeking 30 parking spaces where the ordinance required 46.
 - The board denied this request and specifically noted that a smaller building would resolve the issue of parking spaces. The lack of information regarding traffic was cited as an additional reason for the denial. (See June 28, 2016 Meeting Minutes, page 4).
 - Thereafter, Dollar General submitted a new application reducing the building size by 1,600 sq. ft. but requesting a variance for the coverage limits of Article 5.01 Table 2. At the July 19, 2016 hearing, Dollar General explained that the reduction in building size negated the need for the variance regarding parking spaces. At the October 25, 2016 hearing, Dollar General withdrew their variance regarding Article 5.01 Table 2 for impervious coverage due to the changes in the building size. (See October 25, 2016 Meeting Minutes, page 2).
 - There was no appeal of the board’s October 25, 2016 decision.
 - On November 27, 2016, a certification of zoning compliance was issued by Alan Hardy to Dollar General detailing that the proposed 7,500 square ft. building results in 5,915 gross square feet of the building footprint for retail use. As such, 30 parking spaces are permitted per the calculation of 1 parking space per 200 square feet of gross retail space.

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- There was no appeal of Alan Hardy's Determination Letter of November 27, 2016 under the provisions of RSA 674:33 – Powers of the Zoning Board of Adjustment).

Attorney LeFevre now claims that the Planning Board cannot proceed to review the site plan application because, in his opinion, variances are needed for parking, lot size and lot coverage. However, Dollar General, the board and the public have analyzed these issues with great detail and there has been no timely appeal to the superior court in accordance with RSA 677:4. The board originally denied the variance requests regarding lot coverage and parking on June 28, 2016. The board explained to Dollar General that the building size was too large for this lot. In response, Dollar General reduced the building by 1,600 in sq. ft. On October 25, 2016, Dollar General represented to the board that these variances were not required: "Austin Turner and Andrew Comollo addressed the Board. Dollar General approached them with a smaller building size. The building is about 1,600 s.f. smaller than what they proposed. Mr. Turner emailed a quick layout of the new building. Utilizing this smaller building reduces the impervious coverage and parking requirements and allows them to be more compact. The parking is still compliant with the town's requirement but the spaces are shorter in depth. This means that they no longer need an open space variance. Dollar General has asked to withdraw the Open Space variance. Cherian asked if he had worked with them for parking calculations. Cherian asked if the new proposal needs a variance. The parking calculations of 1 parking space per 200 feet for retail will come under the 40% requirement. Mr. Turner said they would be creating 9x 19 parking spaces. He is withdrawing the request for the impervious surface."

Changes that have been made are in response to the Planning Board, abutters and the public. Numerous questions and concerns raised by Attorney LeFevre's have been resolved by the Zoning Board of Adjustment at meetings throughout the time of May 2016 to October 2016.

Director Hardy stated that, "as Planning Board members you are required by law to follow the zoning ordinance, state and local regulations. Although this is a controversial issue, you took an oath to uphold the law. The issues were raised, discussed at length and subsequently clearly addressed, it is my recommendation that the Planning Board proceed with the review of the site plan application by determining if it is of regional impact, approval of the application and then opening of the public hearing."

Chair Witham asked Director Hardy if he has an opinion and he stated that he believes that issues were raised regarding the ZBA and have been fully addressed. There were no appeals to the Zoning Board of Adjustment regarding his determination of all issues raised and given that the Planning Board covered all issues, he feels the Planning Board should proceed with regional impact decision, acceptance of the application and then on to the hearing.

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James Scrivens made a motion to adopt the report of Director Hardy and the Planning Board finds that all Zoning issues have been previously addressed and that the Planning Board accept the application as complete, Bernard Davis, Jr. 2nd, all in favor, motion passed.

Point of Order called by Bruce Crawford. Mr. Crawford states the part about not having unloading in the parking lot. Chair Witham said that his concerns can be addressed at the Public Hearing and thanked him for his comment.

Matt Lampron made a motion to incorporate the record as previously submitted in this matter, including testimony and documents previously submitted by the Town's consultants, Boscawen DG, LLC, abutters and members of the public. This motion is made in accordance with the June 12, 2017 Merrimack County Superior Court Order in the matter of Clow et.al v Town of Boscawen, Docket No. 217-2017-CV-00224, Mr. Scrivens 2nd, all in favor, motion passed.

Director Hardy, read responsibilities of determining regional impact, listed in Appendix E: Criteria for Determining Regional Impact, November 2016 The Planning Board in NH, see-E-1, Director Hardy stated, "Is it of regional impact?" is the question before the board.

Bernard Davis, Jr. made a motion that this application has no regional impact, 2nd by Barbara Randall, all in favor, motion passed.

Chair Witham asked the Recording Secretary read the Public Hearing Notice:

- **Acceptance of an Application for Site Plan Review, for 7500+ SF Retail Store** submitted by **Boscawen DG, LLC, 83 Orchard Hill Park Drive, Leominster, MA 01453**, owned by, **The Peach Pond Trust, 100 River Road, Boscawen NH 03303** with the location at **Map 81A, Lot 42, 169 King Street** in a **COM zone**.

Chair Witham opened Public Hearing at 7:29pm. Dollar General represented by Austin Turner of Bohler Engineering, Andrew Bolo, Vice President, Liscotti Development and Attorney Paul Bower of Devine Millimet and Branch. Quick recap and summary of the application:

Dollar General received the driveway permit which is the final outstanding document. New Hampshire Department of Transportation (NHDOT), as part of their review, required that the tractor trailers are not allowed to perform loading maneuvers in the public Right of Way (ROW). We have demonstrated that prior to the issuance of the permit, that the loading operations will be contained to the property itself is part of the discussion. There was some discussion whether or not Dollar General will be committed to using a smaller vehicle, which is a WB50. WB 67 is no longer an option to use for delivery. Although NHDOT approved the WB 67, with the issues raised by the Planning Board, the public and discussion prompted by Central New Hampshire Regional Planning Commission (CNHRPC) and Underwood Engineers (UE), Dollar General has committed to the smaller tractor trailer to address any future concerns. This allows the vehicle to

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maneuver into the driveway without impacting the parking spaces. Other discussion was to limit the hours of which is now included on the plan, notes that were added subsequent to the April hearing. It shows that that applicant did address all issues on the plans. The plans are the same as the NHDOT approved and it incorporates all the suggestions from the April meeting. Mr. Turner then handed out the WB50 standard to the Board. The truck is not going to interact with using any of the parking spaces on site. Mr. Turner showed examples of four different entries which are satisfactory and appropriately designed to be able to enter and exit the property without interference with any other vehicles or parking spaces and NHDOT requirements have been met. Hours of delivery, for the record, are listed on the May plans, sheet 4, at the Planning Boards direction, deliveries shall occur outside of peak delivery hours between 7am & 10pm. NHDOT stated that the vehicles will not use the public (ROW), all loading and unloading will be done on the property. Drawing was discussed, the blocking of the driveway being a possibility. It was discussed that if a car stopped, it could cause the same problem. NHDOT considered that this is not going to be a high trip generated traffic area, it is exceptionally low and UE's 2nd review also confirmed that there was no need for a traffic impact study. NHDOT applies the same volume vs delivery schedules. Store hours are 8am – 10pm, Delivery hours will be off peak hours based on the Planning Board's direction. Mr. Davis commented that compared to Black Forest Nursery and Cumberland Farms, Dollar General deliveries will be a breeze since there will not be any gas trucks or large delivery trucks which currently block the entire two lanes for those particular businesses, directly down to the north of the Dollar General site. Carl Matthews business to the south also blocks the road continuously with the mulch and landscaping deliveries. Matt Lampron would like to determine peak time frame for deliveries and discussion ensued regarding limiting deliveries to times which would not interfere with late night, early morning. Snow removal off site being another discussion, which confirmed that it was a backup alarm issue addressed with the trucks resulting in delivery times between 7am to 10pm.

Independent consultants, CNHRPC and UE's comments had been satisfactorily address and meet the standards. Austin would be happy to refresh any topics. Chair Witham stated that the following were some items brought up and many were addressed.

- Traffic Study (discussed and confirmed that it is not needed per CNHRPC & UE reviews)
- Turn Radius (discussed)
- Fence Design (PT Stain & Paint or Vinyl would be the three choices)
Would like to do is get the PB take on materials for screen fence on both sides of the property. Make a decision during the Site Plan Review to incorporate it as part of the plans.
- Offsite Snow removal (discussed between 10pm & 7am)
- Delivery time (discussed 7am – 10pm)
- Lighting shall comply with Article XXIV of Zoning Ordinance
- Outside Sales shall be prohibited
- As-built plans shall be submitted upon project completion

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Chair Witham asked the board if they had any other questions, not hearing any, next up was the list of speakers. Chair Witham confirmed that they would take the speakers tonight in order of signing in,

- 1st speaker was Mr. Cunningham, non-abutter, 11 High St, opposed. Mr. Cunningham discussed government wages, poverty and Dollar General's hourly rates for employees. He spoke of not wanting retailers to pay minimum wage and that he does not want "that type of business in his town."

Chair Witham stated that the meeting will stop this evening at 9pm with a continuance for the next meeting on Tuesday, September 12th.

- 2nd speaker was Chris Goodwin, non-abutter, 276 Queen St, opposed. She has questions for Dollar General and the Planning Board. Chair Witham stated that she was here to make comments and we will take all her comments but was not able to ask questions of the applicant or the Planning Board.
- 3rd speaker, Stan Balch, non-abutter, 36 Weir Road, in support of. Mr. Balch discussed the corridor on King Street and that in the 90's the voters had the chance to vote in a Historical District but voted it down and continued to have it Commercial. Dollar General has done everything possible to abide by the Planning Boards requirements. Mr. Balch feels we need the tax base and to continue to encourage and welcome businesses in the commercial zone.
- Jerry Poulin, non-abutter, 5 Weir Road, in support of, not speaking.
- Diane Balch, non-abutter, 36 Weir Road, in support of, not speaking.
- 4th speaker Bev Lacey, abutter, 351 Queen St, opposed. She stated that Dollar General is going in her back yard. She feels that it is overkill with two other similar stores around. "Do we really need another one of those stores to promote China's economy?"
- Norma Reed, non-abutter, 42 High St, opposed, not speaking.
- 5th Speaker, Eric Munro, non-abutter, 215 Queen St, in support of. For Dollar General to offset the tax burden, need more commercial.
- Tina Larochelle, non-abutter, 151 Water St, opposed, not speaking. Has a letter for submission to Planning Board.
- Ron Reed, non-abutter, 1 High St, opposed, not speaking.
- 6th speaker, Bill Devine, non-abutter, 150 King St, opposed. Submitted comments to the Planning Board. Mr. Devine stated that the people here are honest and he has the highest regard for them. He is absolutely appalled at how the Planning Board is conducting their business. He felt it took a lawsuit to get the Planning Board to listen to the concerns people are having with Dollar General. He fears that nobody is listening. Mr. Devine read a letter stating his feelings regarding Dollar General locating within the King St Corridor. He prefers a Historical District Corridor.
- 7th speaker Elaine Clow, abutter, 357 Queen St, opposed. Ms. Clow has given testimony but unable to find testimony available for the public. She is looking for minutes of meetings and unable to find them on the website. She has copies of tapes of the ZBA and continues to seek out minutes. Ms. Clow feels that the laws of the land are not being followed by the Planning Board or the ZBA. She does not want pressure treated fence

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and is limited in maintaining her home. Ms. Clow states that bounds are not correct on the Peach Pond lot and is appalled with the way things are being handled.

- 8th speaker Andrew Newcomb, abutter, 171 King St, opposed. Discussed Regional Impact and that the Planning Board has to consider it. Mr. Newcomb wants a traffic study and stated that the Planning Board is tasked with getting a traffic impact study. He also is tired of hearing Mr. Turner say 10 transactions an hour and wants the Planning Board to google 10 times an hour by Dollar General. Mr. Newcomb wishes Mr. Turner would stop saying 10 transactions an hour. It is not true. He wants CNHRPC to do a review. Mr. Newcomb says that the two gentlemen here tonight have not been at any meetings and the earth shattering thought is tax money. He again stated that Planning Board is charged with Regional Impact, wants a CNHRPC review and he does not know what the rectangle is which Mr. Turner is showing. Mr. Newcomb is going to watch the trucks coming in and out of Dollar General, if approved, and will take pictures of the trucks coming and goings, reporting all incorrect trucks coming in. Mr. Turner continues to provide false information and Mr. Newcomb does not think that Mr. Turner is a representative of Dollar General. He would like to reiterate, he would like a traffic study, review of CNHRPC and a site walk. He continuously asks if anybody from the Planning Board would like to ask him any questions, nobody ever does. Mr. Newcomb feels the driveway permit is a farce.
- 9th speaker, Jan Raymond, non-abutter, 2 Water St, in support of. Mrs. Raymond stated that 18 years ago or so the residents of Boscawen chose to make the corridor Commercial vs. Historical. Perhaps it is time to revisit. It is commercially zoned and feels the Planning Board has done a great job considering everything, over and over again. New business is very much needed in Boscawen, wage and salary is not really relevant since Dollar General typically offers part-time positions. Mrs. Raymond feels this is in the area of lower income housing and is convenient for walking to the job. People on assistance could seek out part-time jobs and perhaps not rely on as much assistance from the State given the opportunity the part-time jobs that Dollar General would supply.
- James Easler, non-abutter, 20 Queen St, in support of, not speaking.
- 10th speaker, Bruce Crawford, abutter, 357 Queen St, opposed. Bruce wanted to speak last, Chair Witham said it is going in order, as determined earlier. Clow & Newcomb's legal counsel, Attorney Lefevre, had not signed up and took the list and signed up, last to speak this evening. Mr. Lampron was concerned a procedure issue but it is the privy of the board. Chair Witham asked Mr. Crawford why he had to go last. Mr. Crawford, recused as chair, proceeded to tell the Planning Board that it was being done incorrectly and abutters should go first. Mr. Crawford began his discussion stating that the Planning Board is opening the flood gates and believes that the Board is not giving him due diligence. Anyone who believes 10 transactions per hour believes in the tooth fairy. WB50 trucks were rendered obsolete in 1982 and nobody uses the WB50 trucks. Mr. Crawford stated, "This is not going to happen the way they say it is. You approve this without the right conditions we will have problems." Mr. Crawford has great concerns without a turning lane on King Street. Discussion ensued regarding Loudon Road,

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Concord NH in comparison to King Street. He stated that if you do not do this right, we will have all sorts of problems. Nothing is happening with the King St. corridor. If you decide King St is going to be the new Loudon Road, send it back to the Planning Board and then to the ZBA. Mr. Crawford stated that 40% lot coverage is too low. As far as a smaller store goes, there will be more deliveries, people are going to want it bigger and it is going to do the same amount of business as the larger stores. Mr. Crawford does not think there are enough parking spaces, there is a zoning issue and deliveries cannot be blocking parking spaces. When truck deliveries are made the cars are going to be held captive. Mr. Crawford stated that information is coming from the Penacook store location, to which he has been watching and there is a severe driver shortage. He feels that due to this, there are many untrained drivers who do not know how to drive trucks. Mr. Crawford wants to know if the Planning Board serves the people of Boscawen or the BS of Dollar General. He feels we are at revision 5 of the plans. The devil is in the details and it needs to be referred to somebody who knows what they are reading, not the Planning Board.

- Mr. Crawford has the following requested items:
 - CNHRPC & UE both requested a traffic study, per Mr. Crawford.
 - Hours of operations in a residential area needs to be determined and delivery times determined.
 - Snow removal is an unresolved item. Mr. Crawford is happy to have the removal during normal business hours.
 - No dumpster after closing hours.
 - The parking area should be determined by the gross area of the building not the net retail space.

Mr. Crawford said that if we go back to court the area of the retail store will be one of the issues, regardless if anyone is appealing anything nobody knew about. "Good luck with parking trucks, I will be out there with my camera like everyone else." Mr. Crawford feels buildings should reflect the historic buildings around the area. Discussion ensued about a Penacook location, not being mowed.

Time check, 8:55pm, Chair Witham, stated that we should continue the hearing until September 12th, 7pm, to a date certain, due to the time of the evening. Request was made by a member of the audience to continue to September 5, but that is a regular Planning Board meeting with a large agenda and not an option for Dollar General. Possibilities of earlier dates were suggested and discussion ensued. September 12th was set the month prior, to be found in emails during discussion with both legal representatives. Clow & Newcomb's legal counsel, Mr. Lefevre may submit his remarks and concerns in writing if he is not available for September 12th. Planning Board members would like the next meeting to be held on Tuesday, September 12th at 7pm.

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Rhoda Hardy made a motion to continue the hearing to Tuesday, September 12th, 2017 at 7pm, 2nd by Mr. Davis, all in favor, motion passed.

Barbara Randall made a motion to adjourn, 2nd by Rhoda Hardy, all in favor, motion passed.

Respectfully submitted,

Kellee Jo Easler
Recording Secretary