

Town of Boscawen
Planning Board
Boscawen Municipal Complex
Meeting Minutes
Tuesday, October 3, 2017 at 7:00pm

Members Present: Bruce Crawford - Chair, Roberta Witham – Vice Chair, Matt Lampron, James Scrivens, Barbara Randall.

Member Recused: Bruce Crawford (recused himself from this application as an abutter)

Alternate Members Present: Rhoda Hardy, Jeff Reardon

Member Ex-Officio Present: Bernie Davis, Member, Board of Selectmen

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

Chair Crawford called the meeting to order at 6:35 pm.

Chair Crawford then asked if there were any corrections to the draft minutes back from July 11th. Mrs. Randall then stated there were a few corrections. First page, last paragraph about acreage on line 9 reads 1.986 should be 9.96 acres. Same paragraph line 3 has “they owners” should be “the owners”. On page 3 paragraph 30 Sue Norcutt line 4 “wild life” should be one word. Same page and paragraph should be job not jobs. On page 5 on line 6 should be “as needed” not is needed.

MOTION: Mr. Scrivens made a motion to accept the minutes as amended. Mr. Davis seconded. All in favor, none opposed.

Chair Crawford wanted to mention a few things; recruitment of volunteers and alternates for the Boscawen Planning Board. We could use volunteers for all boards.

He also mentioned the 2017 NHMA Law Lecture Series is being held October 14th. There is still time to sign up and is only one full Saturday instead of in the past it was three Wednesday evenings.

The NH Municipal Association’s 76th Annual Conference and Exhibition is scheduled for November 15th and 16th in Manchester. Attendees will have several different seminars and speakers to choose from and over 100 consultants and attorneys as well as other useful information. See Assistant Easler or Director Hardy to sign up. Meals are included and the Town pays for the registration fees.

Chair Crawford is waiting to hear back from Concord on the Whitney Road redevelopment and rezoning proposal. Chair Crawford is curious to know if the Concord Planning Board will consider that the project has regional impact.

Brett Todd will be at the Penacook Community Center on Thursday, October 5th with a presentation on the Penacook housing project.

Wednesday is the NH DOT Governor’s Advisory Commission on Intermodal Transportation Ten Year Highway Plan that Mr. Hardy will be attending on the King Street Corridor Project proposed for 2027. This project is proposed to cost 5.2 million dollars at this time. There is a plan in the Planning and Community Development office if anyone is interested in looking at the proposal.

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Chair Crawford then turned over the meeting to Vice-Chair Roberta Witham at 7:45pm.

Vice-Chair Witham stated that tonight our alternates will be voting, to see that we have a full board. Our Alternates that will be voting tonight are Rhoda Hardy and Jeff Reardon.

Vice-Chair Witham asked the Planning Board if there were any questions or if they were ready to begin deliberations. We are here for a meeting on deliberations of the Dollar General Site Plan Review. The public hearing was closed on September 12th, therefore there will be no testimony or submissions from the audience this evening.

Vice-Chair Witham asked if the Planning Board had reviewed the minutes from September 12, 2017 and if there will be a motion to accept the minutes.

MOTION: Mrs. Hardy made the motion to accept the minutes as written. Barbara Randall seconded. All in favor, none opposed.

Vice-Chair Witham mentioned we received a letter from Henry Amsden after the hearing was closed on September 25th. We cannot use it at this time as the public hearing was closed.

MOTION: Mrs. Hardy made a motion that the letter cannot be used as the public hearing was closed. Mr. Davis seconded. All in favor, none opposed.

Vice-Chair Witham stated we can start deliberations with any questions.

Mr. Reardon asked Director Hardy if he could have clarification on a subject from the last meeting regarding the fire code. It was stated by Attorney LeFevre, according to code, 30 ft. must be left between any new building structures. If that is the case, should we ask Dollar General not to build any closer than 15 ft. to the property line? Mr. Reardon doesn't know the fire code; would Director Hardy explain. Director Hardy stated there was no specific reference made in the NH Fire Code, (NFPA 1, 2009 Edition) to a 30 ft. separation between any two buildings. In this case, the closest two buildings could be together is 20 ft.; 10 ft. on either side of the property lines. Further, the Boscawen Zoning Ordinance states that only 15 ft. is allowed between buildings, per Article VI, Supplementary Regulations, and Subsection 6.02 b.

Condition #1

Mr. Scrivens had a question regarding the size of the trucks that can enter the property. The plan was approved for WB67. Director Hardy explained that you can impose conditions and the board can make these conditions. Mr. Davis stated he would like to make a motion that we have a condition that they only use WB50 trucks. He explained that the conditions precedent would need

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to be done for final approval and conditions subsequent are the things that must be done for the construction process.

MOTION: Mr. Davis made a motion that deliveries associated with post construction store operations shall be by a vehicle with WB50 classification or smaller. Mr. Lampron seconded. All in favor, none opposed.

Condition #2

Director Hardy said he went through some of the issues and conditions of the previous minutes and he had four or five. He would like to look at these one by one and we know there are comments on them. Director Hardy would like to make the condition that Boscawen DG LLC shall pay the Town of Boscawen impact fees as approved by Boscawen DG LLC. Dollar General shall pay the Town of Boscawen impact fees as approved by Boscawen DG LLC. Assistant Easler mentioned this is also in the application. It was asked if it was a condition and reaffirmed that it was not but it was in the application and they had signed this and would pay them.

MOTION: Mr. Scrivens made a motion that Dollar General shall pay to the town of Boscawen impact fees as approved by Boscawen DG LLC. Mrs. Randall seconded. All in favor, none opposed.

Condition #3

Director Hardy stated that you had a discussion about the fencing around the property that was to be installed. One of the options was white vinyl, two were pressure treated; one was stained and the other painted. There was testimony that two of the treated wood options might have an impact on the organic nature of the abutter's garden, so the third option was white vinyl. Mrs. Randall suggested that we put in a condition that it must be maintained. Director Hardy suggested that it shall be maintained in good order. Director Hardy replied yes, to the design and Assistant Easler added it should be on the site plan. The question was asked should it be a condition and Director Hardy answered normally you wouldn't put in the conditions that the fence will be made of this material, this high, this long, etc. What you would say is the applicant is responsible for paying for the fence, putting and erecting the fence and keeping it in good order. The specifications are for anything that is normally in the plans, so if it is an important detail it should be in the plan. Mrs. Hardy asked Director Hardy, wouldn't it be up to Dollar General to maintain it and keep it in good order? Director Hardy replied this is material, this is a condition that it shall be maintained in good order. Mrs. Hardy stated that if it's determined that a fence is needed, there are no guarantees in life. Director Hardy then reassured her by saying it shall be maintained in good order shows your intent. Mrs. Hardy agreed that at least it shows we expect it to be maintained in good order. Director Hardy agreed. Mr. Scrivens asked Director Hardy that after the winter season, it has been plowed into and is in poor condition, what are the enforcement option? What do we do about getting it repaired? Director Hardy stated there are two basic tools. One would be code enforcement

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and the other is revocation of site plan approval. Director Hardy wanted to remind the Planning Board that there is a retaining wall beneath most of the fence. Because of the retaining wall, Director Hardy thinks that the fence is less likely to be damaged during the winter season.

MOTION: Mrs. Hardy made a motion that the fence between properties located on site plan shall be white vinyl material and shall be maintained in good order. Mr. Davis seconded. All in favor, none opposed.

Condition 4

Director Hardy stated another one of the issues discussed was that Dollar General will be responsible for construction oversight management through Underwood Engineers.

MOTION: Mr. Lampron made a motion that Dollar General shall pay for construction services conducted by Underwood Engineers as described in the Engineering Services Request (ESR # 48), dated May 4, 2017. Mr. Scrivens second. All in favor, none opposed.

Condition 5

Mr. Hardy stated another one of the items they discussed was that deliveries shall not block parking spaces and parking spaces shall not be used for storage, display, signage, or maneuvering for areas for loading docks or bays. Mr. Lampron had asked if this should be put into two different conditions. Assistant Easler stated that this wording comes from the Zoning Ordinance. The Planning Board and Director Hardy discussed different options for parking. Mr. Lampron had another concern to do with products outside but he was reassured by the Board that, from the start, there have been no outside sales permitted.

MOTION: Mr. Scrivens made a motion that deliveries shall not block parking spaces and parking spaces shall not be used for storage, display, signage, or for maneuvering areas for loading docks or bays. Mr. Davis seconded. All in favor, none opposed.

Condition 6

Director Hardy stated that the next issue is the sale of outside merchandise to be prohibited. Mr. Reardon asked if this would do it and Mr. Davis replied outside displays and sales are prohibited. Mr. Scrivens mentioned that some stores look like they have an explosion outside of their stores but others have propane or firewood and other things, but are displayed and kept very neat. Mrs. Hardy said we don't know what previous planning boards allowed. Director Hardy added if it's not on the site plan approval, it would be very hard to use it on another existing business. If a new business came in or if there was a modification of the site plan that would be the time that the Planning Board could impose conditions. Director Hardy asked what about signs in the store windows? A comment was made, that as long as the signs are inside the store, they are ok.

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MOTION: Mr. Reardon made a motion that outside display sales and signage shall be prohibited. Mr. Davis seconded. All in favor, none opposed.

Mr. Lampron asked for a clarification about the survey in the testimony, that there may be a dispute. We have a stamped survey from Dollar General that the abutter's surveyor didn't do a full boundary survey.

The information that was presented by Dollar General is a stamped survey of the lot. The survey for the Harold Holmes lot (Newcomb), 1982 survey, presented only one side of the Dollar General survey. There is no apples to apples survey, a full survey and a challenge to one line of the survey. The town does not have jurisdiction over boundary disputes. These debates are resolved through the court systems and Director Hardy has found no reference that the town has jurisdiction over the boundary disputes. Mr. Lampron asked Director Hardy if Dollar General had provided a complete boundary survey and Director Hardy said yes. At the end of the day, the property owners would file to Quiet Title if there is a dispute. We have a stamped plot plan submitted by Dollar General. Mr. Lampron then reviewed the Site Plan submitted by Dollar General.

Mr. Scrivens asked, in construction of the building, it was determined that the retaining wall was on the abutter's property, would that be adverse encroachment and would it be rectifiable? Would the new construction be required to be moved or altered, or is it up to the judge? Director Hardy answered him at that stage you see several different options. An Equitable Waiver of Dimension to deal with a situation where there are errors such as part of a garage built on abutting property, those errors have happened before and they are resolved between parties in the court system. The extreme case would be if they did not agree they could go to court to resolve it. Mrs. Hardy and Mr. Lampron discussed a specific example of encroachment. Director Hardy stated he hasn't found an indication of a town taking jurisdiction or any authority to do that. He noted we only have such authority as granted to us by the legislature, typical practice has been to handle these disputes in a court by parties not with the Planning Board.

Mr. Lampron asked Director Hardy for more clarification about the zoning issues as previously discussed. Director Hardy asked, "How is this fitting into the Planning Board review?" Many years ago you would first apply to the Planning Board and get the site plan approval, then proceed to the ZBA to get your zoning approval. Our current practice is we do a staff review and Director Hardy files a determination letter, as the code enforcement officer. ZBA at that point, accepted the application and undertook a review as a board. Some of the variances were approved, some were denied, some were rendered moot by changes offered by the applicant. From the date of the filing of the Notice of Decision, the appeal period runs for 30 days, under the procedures in RSA 674:33. Then, when the statutory appeal period expires, the appeal becomes final.

Director Hardy asked if Mr. Lampron had anything specifically that he wanted to ask. Mr. Lampron said it was brought up in public hearings and he wanted to clarify that these specific

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points were made prior to coming to us, but if that is already in notices and notice decisions that we don't have jurisdiction or anything further to discuss. Mr. Lampron wanted to clarify that the specific points were made previously with the ZBA prior to coming to us. Director Hardy stated that they are there, in the record, with the ZBA. It's an appealable process, but it's not appealable after the appeal period expires.

Condition 7

Mr. Reardon's next question was in regards to landscaping and maintenance and his concern that the pavement is kept in good condition. There should be a condition about mowing the grass and weeding on a regular basis. Director Hardy said he thinks the landscaping is in the plan but not the maintenance. Mr. Reardon spoke about the maintenance of the driveway and parking lot and making sure they keep the pavement in good order and lines repainted when they need to be and he asked what level enforcement there would be. Director Hardy asked what standard he wants to impose. In his opinion you don't want to do this if appears you are impacting just one business, but if it is for all future businesses going forward. Mr. Reardon said he would want to do this for all future businesses. Director Hardy said that keeping in good order sounds like a reasonable standard.

MOTION: Mr. Lampron made a motion Dollar General shall maintain buildings and grounds consistently in good order. Mrs. Randall seconded. All in favor, none opposed.

Condition 8

Vice-Chair Witham asked if there were any more questions or conditions. Director Hardy stated he would like to ask that at the completion of construction, the applicant shall provide the Town of Boscawen with as-built plans. Vice-Chair Witham moved the question.

MOTION: Mrs. Hardy made the motion Dollar General shall, upon completion of the construction, provide the Town of Boscawen as-built plans of the project. Mr. Scrivens seconded. All in favor, none opposed.

Condition 9

Director Hardy discussed the issues of snow storage and hours of operation being on the site plan. These were items that came up from the public testimony and notes which had been submitted in the hearing. Mr. Scrivens said the hours of delivery were on the application but not the hours of operation and we would want to add the hours of operation as a condition. Mr. Davis agreed.

MOTION: Mr. Davis made a motion that Dollar General's hours of operation of 8:00am to 10:00pm Monday through Sunday be listed on the plan. Mr. Scrivens seconded. All in favor, none opposed.

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Condition 10

Director Hardy discussed that one of the notes he had is no outside loud speakers are allowed; volume of announcements and music shall not be heard outside of the store. He's not aware of any time during the discussions in the hearings, anything about outside speakers. Mrs. Hardy asked when did this come up? A comment was made that it was presented in some of the written material. Mrs. Hardy said it has been an issue with other places and thinks it would be a good idea to have it as a condition.

MOTION: Mrs. Hardy made a motion that no outside speakers are allowed. Mrs. Randall seconded. All in favor, none opposed.

Condition 11

Discussion ensued on addressing operating controls, dumpster pickup and delivery. Mr. Reardon asked if dumpster delivery would fall under those same guidelines. Mr. Lampron said the plan note reads "Deliveries & Pickups shall occur outside of peak operating hours or otherwise occur such that truck maneuvers can operate entirely within subject site. Deliveries shall be conducted between 7:00 am and 10:00 pm." Mr. Reardon asked if the dumpsters fall under that category. Mrs. Hardy stated she supposed they aren't delivering dump they are taking it away. Can we say delivery and/or pick up of trash? Mr. Davis replied they pick it up, dump it and put the dumpster back, they don't keep bringing different ones. Mrs. Hardy agreed and said she realizes that, and that's why we can't say delivery. Mr. Davis replied you can't zero it out. Mr. Lampron concluded by saying we are reading a note that is already on the plan, so you'll need to make a motion to modify that note or have a separate motion. Director Hardy said you're going to have more pick-ups than just the trash and you have it referred to under deliveries, usually they go in and pick up whatever they are returning to their shop. Mrs. Hardy said she thinks the delivery should cover it but she still would like to add the word pick-ups so someone doesn't pick this apart later on.

MOTION: Mrs. Hardy made a motion to amend the existing plan note about deliveries and to add pick-ups. Mr. Scrivens confirmed by reading the motion to amend the existing note on the plans regarding deliveries to include pick-ups. "Deliveries & pick-ups shall occur outside of peak operating hours or otherwise occur such that truck maneuvers can operate entirely within subject site. Deliveries shall be conducted between 7:00 am and 10:00 pm." Mr. Davis seconded. All in favor, none opposed.

Mr. Scrivens said during the public hearing there were some concerns regarding the driveway flare and NH DOT standards don't allow it to go past the horizontal or vertical projected line. Looking at the plans it appears that the flare in front goes out in front of the property line but it would be out in the right-of-way and he questioned if that would be an issue. It was discussed that it would be up to the NH DOT to determine; we have limited jurisdiction. It would be up to the two land

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owners to resolve. Director Hardy read the document, it says all work to be completed in accordance with this permit and accepted by the state prior to use. Discussion ensued regarding right-of-ways. Director Hardy stated that it has been our experience that the right-of-way width is, “consistently inconsistent.” So it means they have to inspect it, notify District 5 office 48 hours prior to construction and the State right-of-way Bureau. Mrs. Randall and Mr. Scrivens discussed that it is up to District V, not the Planning Board.

Mr. Reardon brought up the subject of outside lighting and potential infringement on the. Director Hardy replied there is a plan for the outside lighting and it is required to comply with the Town of Boscawen Zoning Ordinance Article XXIV – Outdoor Lighting Ordinance. Mr. Reardon is concerned with lights shining in the windows of the abutters in the middle of the night. Discussion ensued regarding the dark sky standard lighting plan as shown on site plan page 11 displays the lighting grid and how the light is distributed over the site. To address his concerns, Mr. Lampron noted, that a 0.0 foot-candle reading at the property line indicates that there is no lighting present. Director Hardy continued by making a reference that Cumberland Farms current lighting meets the Dark Sky Ordinance in the Town of Boscawen Zoning Ordinance. The lighting plan submitted for Dollar General also meets the requirements of the Town of Boscawen Zoning Ordinance and it is stated on the Site Plan.

Director Hardy asked what the plan was on the time frame for the evening’s meeting. Vice-Chair Witham stated 9pm seemed like a fair time to stop, but we can stop at 10pm. She asked the board if they wanted to stop at 9 or 10pm. It was agreed by all to stop at 9:00pm.

Vice-Chair Witham said that we will stop at 9:00pm. We will continue to a date certain of November 7th 2017 at 6:30pm.

MOTION: Mr. Scrivens made the motion to continue to November 7th 2017 at 6:30pm. Mr. Davis seconded. All in favor, none opposed.

The meeting adjourned at 9pm.

Minutes respectfully submitted by Linda Chandonnet.