



OLD VALUES - NEW HORIZONS

COMMUNITY DEVELOPMENT

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Planning Board Approved Minutes Wednesday, September 3, 2014 8pm @ Community Development Department

Board Members:

Kristi St. Laurent, Chairman – Present
Alan Carpenter, Vice Chair – Excused
Paul Gosselin, Member – Present
Pam Skinner, Member – Excused
Margaret Crisler, Member – Present
Vanessa Nysten, Member – Excused

Bruce Breton, Selectman – Excused
Joel Desilets, Selectman Alternate – Present
Steve Bookless, Alternate – Present, excused at 9:25pm
Jim Fricchione, Alternate – Excused
David Oliver, Alternate – Present
Kathleen DiFruscia, Alternate – Present

Staff:

Laura Scott, Community Development Director
Elizabeth Wood, Community Planner
Laura Accaputo, Planning Board Minute Taker, Excused

6:30pm Non Public Meeting w/Legal Counsel

Chair St. Laurent called the meeting to order at 8:12 pm, followed by the Pledge of Allegiance, member attendance and a brief synopsis of the agenda.

The Chair sat Mr. Oliver for Ms. Skinner, Ms. DiFruscia for Mr. Carpenter, and Mr. Bookless for Ms. Nysten.

2015 Master Plan Workshop-Discussion Topics with Local Energy Committee & Library:

- What from the previous Master Plan has not been accomplished that you think should be included in this Master Plan?
- What new ideas, initiative, concerns, etc. that were not in the previous Master Plan that should be included in this Master Plan?

Mark Kovacs, Chairman of the Energy Committee addressed the Board. He introduced Energy Committee Members Neelima Gogumalla and Peter Tousignant. He explained the 5 key objectives for the Energy Chapter of the 2015 Master Plan are:

- To initiate and support energy conservation, efficiency, and sustainability relative to town, school district, residential and non-residential buildings, vehicle use, outdoor lighting and waste disposal.
- Encourage energy efficiency, conservation, and sustainability in Windham to reduce energy consumption and cost.
- Establish best management practices and technologies in future construction, renovation and maintenance of public buildings and facilities.
- Reach out to the community to inform and educate residents and businesses regarding energy conservation and sustainability principles.
- Provide input for Town policies regarding energy efficiency and sustainability for residential, commercial and industrial buildings.

Ms. Gogumalla stated the following actions have been taken or are underway by the Local Energy Committee:

1. They applied for and were awarded the Energy Efficiency Conservation Bloc Grant request to support energy audit in the amount of \$34,743.
2. They conducted energy audits at Town Hall, Community Development, Bartley, Senior Center, and Armstrong in 2011 and Fire, Police, Library, and Searles in 2012.
3. Wind Energy Ordinance in 2011.
4. Solar/Wind tax exemption.
5. Implementation of the Audit recommendations 2012-2014; all town buildings weatherized; CIP budget funds Library HVAC improvement.
6. Initiated discussion with supplier for solar, hot air system at Windham High School.
7. Moved Town to alternate electricity supplier yielding lower rates and increased renewable energy component.
8. Conducted analysis of benefits/costs associated with natural gas expansion into Windham; tracking expansion plans being developed by Liberty Utilities. Mr. Kovacs noted Liberty Utilities has promised to provide an analysis by the end of the year.

- Mr. Kovacs also noted in preparation for the Energy Chapter the Committee has reviewed the Energy Chapter of Master Plans in similar cities and towns in New Hampshire as well as the results of the Master Plan survey for clues on the residents support of energy initiatives.
- Mr. Desilets stated they are working on encouraging residential energy conservation and increasing the adoption of low impact energy and lighting choices.
- The Board discussed with Mr. Kovacs the process for getting natural gas into Town. Mr. Bookless noted a large percentage of residents that answered the Master Plan Survey are in favor of it due to the savings compared to other heating sources. Ms. DiFruscia stated this is an important part of the vision for the Energy Chapter along with renewable wind energy and high efficiency town buildings. Ms. Crisler agreed and noted it will be very helpful to have their assistance at the Design Review Committee. Mr. Bookless suggested they look into bio-diesel verses fossil fuel diesel for town trucks and Mr. Tousignant agreed and noted these technologies are also more affordable now. Mr. Desilets suggested the LEC provide a comment to incorporate into the Vision Chapter.

Catherine Robertson-Souter Library Trustee, Mark Branoff Library Trustee, Peter Tousignant, Library Board Chairman and Carl Heidenblad, Library Director introduced themselves. Mr. Heidenblad explained the library is a vital part of the community and very well used with a greater emphasis being placed on their programs. He stated the keys to good library service are a welcoming staff, outstanding collection, quality information services, good programs, and an attractive and comfortable facility and he believes Windham has all of these pieces. He noted they have brought some proposals to the CIP Committee to keep the building maintained and have partnered with the Energy Committee and Garden Club to help maintain and improve the facility and have also received help from local scouts. He believes it is important for the library to stay relevant and respond to the communities needs. Mr. Tousignant noted they have made great strides in the last four years such as joining the Greater Manchester Library Consortium and transforming information from the energy audit into real savings. He also stated there is an initiative to look at solar electricity for the library. Ms. Robertson-Souter stated with all of the advancements they have made they need to make sure they stay abreast of the changes in technologies and needs for the community and that the Master Plan supports the Library and keeps it vital. Mr. Branoff agreed the Library is a great asset to the town. They also noted the strong support they receive from the FLOW organization.

- Ms. DiFruscia summarized that a very important part of their vision is to remain vital as both a cultural, educational, and technological resource.

- Ms. Crisler asked if expansion of the library was in the plans and Mr. Heidenblad replied that although virtual materials take some pressure off, future expansion may be needed as events and programs grow.
- Mr. Desilets stated the programming at the library is excellent and brings great value to the community and that it has become a community gathering space and should be highlighted in the Vision Chapter.
- Mr. Oliver asked what the vision is for the Library for the next ten years and what trends are coming. Mr. Tousignant stated there is a need for public space to enjoy cultural activities and Mr. Heidenblad pointed out the trend of future materials in the virtual realm and how during that transition they will have to maintain both physical and virtual materials which will require resources and keeping staff educated.
- Ms. DiFruscia summarized the vision for the Library is that it evolves to address advances in modern technology, including staff training, while maintaining traditional materials and expansion for cultural and programming activities.

The Chair called a 5 minute recess at 9:20pm and called the meeting back to order at 9:25pm.

9:00pm Public Hearing:

Ms. Crisler read Case #2014-28 into the record.

Case #2014-28 Minor Site Plan/Change of Use Application

A Minor Site Plan has been submitted for 1 Delahunty Drive (18-L-450) in the Professional, Business and Technology District and the Cobbetts Pond and Canobie Lake Watershed Protection District. The applicant, Peter Zohdi of Edward Herbert Associates, on behalf of Cafua Realty Trust LIV, LLC, is proposing to modify the October 2, 2013 Site Plan Application, specifically the dumpster, HC parking space locations, walkway relocation/reconfiguration, landscaping, porous pavement locations and changes to the building elevations. Per Section 303.5 of the Site Plan Regulations, if the application does not qualify as a Minor Site Plan then it will be deemed a Major Site Plan and the application will be heard as a Preliminary Major Site Plan Application.

- Ms. Scott provided a memo dated August 28, 2014 listing all items not in compliance with the approved site plan along with a letter from Keach Nordstrom Associates dated August 27, 2014 in review of the application and minutes from the August 27, 2014 Design Review Subcommittee Meeting.. She also noted a letter of intent dated August 14, 2014 from Mr. Zohdi of Edward Herbert Associates along with a memo dated August 14, 2014 detailing how Section 303.3 is satisfied were also included in the packet. She explained there has been additional landscaping installed since the packet went out last week and the snow storage areas have been identified on the plan.
- The Chair stated her concern is an increase in impervious pavement will put them over the limit for the district and Ms. Scott explained that they are proposing to amend their plan with the relocation of the porous pavement to two spaces in the delivery area since the two areas along the side of the building that should have been porous were installed with concrete pads. The Chair stated currently they are in violation of zoning and Ms. Scott agreed if this application wasn't approved they would be in violation of the Ordinance and would either need to seek relief from the ZBA or rip out the concrete pads and replace with porous pavement.
- Mr. Desilets asked if the concrete pad they were discussing was in front of the drive through window and Ms. Scott answered it is in front of the window but that it is not a drive through window as it doesn't open. Ms. Scott also noted the look of the window has been changed but there was always supposed to be a window there. Ms. DiFruscia asked if this was supposed to be

a mural or art as opposed to a window and Ms. Scott stated the Board did discuss this but the final vote was for false windows along the side of the building. She stated since this window is not the same as the others it is another item they are asking to amend.

Mr. Gosselin motioned to open as a Minor Site Plan based upon the criteria provided, seconded by Mr. Desilets.

- Ms. DiFruscia stated she believes the changes that were made are significant relative to the location and installation of the two pads and the window and it appears to be what you would see at a drive through which is a significant deviation from what was approved. Ms. Crisler agreed and believes this should be a Major Site Plan.
- Mr. Desilets withdrew his second.
- Mr. Gosselin stated the reason he recommended this as a minor is most items on the list are simple changes and appear to be made due to unforeseen circumstances such as the topography of the property.

Mr. Oliver seconded the motion.

- The Chair stated in looking at the criteria she agrees with the outline of the criteria making it a Minor Site Plan in that what is built and being proposed is still under 30% and the remaining items are minor, although she believes this was a purposeful change and would like to hear an explanation from the applicant.

The Chair took a vote on the motion made by Mr. Gosselin and seconded by Mr. Oliver. Motion failed: 3-3-0 with Ms. Crisler, Ms. DiFruscia, and Mr. Desilets in opposition.

- Ms. Scott stated this is now a Preliminary Major Site Plan which will require a second hearing and allow the applicant to operate under a temporary Certificate of Occupancy for 365 days without making changes. Ms. Crisler stated they are in violation of zoning and Ms. Scott stated they are in the process to change it to come into compliance.
- Ms. DiFruscia asked why the window was changed and stated it is clear to her in the way the pads have been located this is for a drive through and it would have been their prerogative to apply for a zoning change but to have made this change knowing they were denied a variance and deviating from the plan sets a very bad precedent. She stated she will not have a problem if they make the window conform and take out the two concrete pads.

Ms. DiFruscia motioned to open as a Preliminary Major Site Plan application, seconded by Ms. Crisler. Motion passed: 5-1-0 with Mr. Gosselin in opposition.

- Ms. Scott stated the following items have been or will be completed: the missing bike rack will be installed tomorrow, the missing decorative freestanding lights and gooseneck lamps have been installed, the one way sign has been changed, and more of the approved landscaping has been done.
- Mr. Zohdi explained the items not in compliance as outlined in Ms. Scott's memo dated August 28, 2014 as follows:
 1. They have installed an extra dumpster for recycling and have relocated the gate opening location so it will not open into the driveway during trash pickup making it safer. The fencing has been changed to chain link as it is more practical, has more give, and is more easily replaced. Mr. Greg Nolan, Cafua Management, stated they have added slats to screen the trash.
The Planning Board agreed to this change.

2. They have relocated the Handicapped Parking spaces in front of Dunkin Donuts to the two adjacent retail units to make them more accessible to these units.
The Planning Board agreed to this change.
3. The paver walkway is longer and has been installed at an angle to better accommodate the grade of the land and make it more handicapped accessible. This has changed the snow storage areas and landscaping. Ms. Crisler had some concerns with the possibility of the snow storage overlapping the walkway and Mr. Zohdi stated most of the snow storage will be in the back of the property and they will not put any snow on the walkway. The Chair asked if the walkway meets ADA requirements and Mr. Zohdi explained they tried to meet ADA but in some areas they do not and he stated the walkway was never approved based on ADA. The Chair stated she raised this concern at the original hearing as it is a Federal Guideline and not for the Planning Board to approve; a pathway or walkway from the sidewalk to the accessible entrance is supposed to be accessible. Ms. DiFruscia asked what it would take to make it fully compliant and Mr. Zohdi stated it can't because they are tied to existing elevations and if necessary they will take the walkway out. Mr. Desilets asked if they knowingly approve something that is not ADA compliant what the town's culpability is if someone is injured and the Chair stated the responsibility is on the designers of the site to build an accessible site compliant with all regulations and on the contractors to build it right. Mr. Gosselin stated if the slope and grade do not allow it to meet the requirements they would be better off having them remove it rather than be non-compliant. Mr. Desilets asked how it wasn't known originally that it wouldn't be ADA compliant and why a direction wasn't chosen to make it complaint and Mr. Zohdi stated they couldn't lower the road or the driveway so they did the best they could with the grade for each section. The Chair stated she would like to see it reengineered to meet the guidelines and Mr. Zohdi stated he would look into adding railings and doing what he can to make it compliant.
4. The proposed mulch berm along the parcel border with Delahuntys and along the section of parcel after the driveway was replaced with a guardrail for safety reasons due to the slope of this area. They will comply with the plan for mulch berm and planting in the slope.
The Planning Board agreed to this change.
5. Additional landscaping has been installed beyond what was originally approved. All landscaping shown on the approved plan will be installed.
The Planning Board agreed to this change.
6. Porous pavement is missing from the site, increasing the impervious cover of the site. These changes to porous pavement have been constructed in two areas along the driveway on the left side of the building as opposed to the area shown on the approved site plan. The developer is proposing to install this porous pavement in another area of the site.
 - Mr. Desilets believes this item should be revised to state concrete pads were added for drive through, increasing impervious cover of the site. Ms. Scott stated there is no drive through and no future plans for one as zoning doesn't allow it and putting that would indicate it was happening. The Watershed piece is the issue. Ms. DiFruscia asked Mr. Zohdi why the concrete pads are there and Mr. Zohdi replied they prepared the site in the event there are zoning changes in the future or they get a variance for a drive through. Ms. DiFruscia stated it was not approved and those changes should have been made after not before. Mr. Zohdi stated if these changes were made in the future it would block the driveway and since they will change two spaces in the delivery area to porous pavement they will stay under 30%. The Chair stated porous pavement is not recommended for areas with truck use and Mr. Zohdi agreed but stated it was the only recommendation he had and that most deliveries these days do not come on eighteen wheelers. The Chair asked why it wasn't brought back before it was changed as changes requested to the approved site plan, which was agreed upon by the applicant, should be brought back before they have a built environment. Mr. Zohdi stated he was not aware this change was made until Ms. Scott contacted him for an as built plan of the site and therefore asked Attorney Cronin to answer this question. Attorney Cronin stated there is no secret why the concrete pads are there, they want a

drive through in the future and they had an opportunity to do it now and save money. He stated the key in the statute is substantial compliance and construction doesn't stop to wait to get on a Planning Board agenda. Ms. DiFruscia asked if he was saying it is acceptable to subvert the Planning Board and Attorney Cronin replied that is not what he is saying and it would have been better if they came in first but the reality is they didn't. He stated the issue is to meet the Watershed Ordinance and if they meet the criteria of 30% max they are in compliance, if you ask them to dig it up they can appeal it and leave it unchanged for a year and everyone will spend a lot of money but in the end it is not a health, safety, and welfare concern it is an aesthetic concern. Ms. DiFruscia stated this is setting a bad precedent for anyone that comes before the Board to say they have an approved plan but are going to do what they want irrespective of what was approved. Attorney Cronin asked there is no harm in having concrete instead of impervious if it meets the requirement.

7. Roof Scuppers and downspouts have been moved to the rear of the building, a door has been added to the rear of the building and the existing doors are not per the approved plan, a roof ladder has been relocated and utility meters/panels and roof scuppers have been added to the building.

The Planning Board agreed to these changes.

The left elevation of the building has a window not per plan and the Design Review Committee recommended this be removed and the approved window put in. Ms. DiFruscia and Ms. Crisler agree with this recommendation and Mr. Deislets stated it is a tough decision and the proper channels were not followed. Mr. Nolan stated the window sizes are the same and it is just the framing that is different and it is a faux window. Ms. DiFruscia asked why they didn't frame it the same as the other windows and Mr. Nolan didn't answer the question. Mr. Zohdi suggested the Board take a site walk on the property and they will see there is not much change and the intent was not to damage the building in the future if zoning changes and a drive through is permitted. Ms. Crisler stated this zoning has been challenged twice and overwhelmingly defeated and the variance application went all the way to the Supreme Court and the Town prevailed so preparing for a future drive through is premature and the applicant knew the zoning before he bought the site. Mr. Gosselin stated they spent money for a drive through they cannot have and they did some things contrary to the spirit and intent of what the Board approved but now they must decide what options they have to get this in compliance. He also asked if there was an alternate location for porous pavement other than the delivery area to alleviate the issue and Mr. Zohdi stated this was the location recommended by the Design Review Committee. Mr. Gosselin suggested another area on the site and Mr. Zohdi said that would not be a problem. The Board decided to move on to the next issue.

- Ms. Scott noted the only other issue is the 4 existing freestanding lights on site are not in compliance with the approved site plan nor have they been requested to be modified. Mr. Zohdi explained the other lighting in this area is shoe box lighting and that is what they used to be consistent. He stated they are dark sky friendly and better for safety. Mr. Desilets noted the Design Review Committee unanimously agreed that the lights should be what was approved on the Site Plan.

The Planning Board agreed to this change.

Ms. Crisler motioned to reconsider the vote of Minor Site Plan or Preliminary Major Site Plan for Case #2014-28, seconded by Mr. Gosselin. Motion passed: 4-2-0 with Ms. DiFruscia and Chair St. Laurent opposed.

Ms. Crisler motioned to consider this a Minor Site Plan because Mr. Zohdi was very eloquent and clear in explaining the details and most appear to be normal differences between the proposed and as built, seconded by Mr. Gosselin.

Ms. DiFruscia agrees there are a number of minor issues but there are two significant issues which she believes make this a Preliminary Major Site Plan. Mr. Gosselin stated the scope of the open issues are relatively minor. The Chair stated by the numbers most issues are minor in nature however the intent is major.

Motion passed: 4-2-0 with Ms. DiFruscia and Chair St. Laurent opposed.

The Chair opened the hearing to the public as a Minor Site Plan at 11:23pm and hearing none the public portion was closed.

Ms. Crisler motioned to approve the requested changes to the Site Plan with the following exceptions: the walkway from Route 111 to the site be brought into compliance with ADA and worked out with staff; the concrete pads that are replacing the approved porous pavement in the drive aisle be removed and the proper porous pavement put in, as the suggested areas to substitute for the porous pavement, in particular the delivery area, is not a recommended place for this type of pavement, seconded by Ms. DiFruscia.

Mr. Gosselin stated his concern with the walkway is it hasn't yet been proven it can comply with ADA and they may be passing a motion that forces them into non-compliance. He asked the motion be changed to state they will work to be ADA compliant. Ms. Crisler stated if they can't work it out it comes back to the Board. Mr. Gosselin also asked they be allowed other options to locate porous pavement and that they just be required to find the offset to get back into compliance.

Motion Failed: 2-4-0 with Mr. Oliver, Mr. Gosselin, Mr. Desilets, and Chair St. Laurent opposed.

Mr. Gosselin motioned to approve the site as built with the following two conditions: the appropriate porous pavement be added to the property and the walkway be made compliant with ADA if possible and if not possible the walkway be removed for ADA safety concerns, seconded by Mr. Desilets.

Mr. Desilets stated his concern that removing the walkway doesn't make sense and asked if staff would get advice from legal counsel.

Mr. Gosselin amended his motion as follows:

Motion to approve the site as built with the following two conditions: the appropriate percentage of porous pavement be added to a location that is not the delivery location and staff work with the applicant to resolve the ADA issue. Mr. Desilets seconded the motion. Motion passed: 4-2-0 with Ms. Crisler and Ms. DiFruscia in opposed.

The Chair addressed the applicants and stated they have had discussions in the past about Site Plans not being followed and coming back to the Board and that this sets a precedent that if the applicant doesn't like what was approved that they can build what they want and come back to the Board and say its already been done and changing it will be a hardship on the business. She stated she takes issue with having an approved site plan and then building what you want and trying to make the Planning Board look like the bad guy for requiring the Zoning Ordinance and ZBA decisions to be followed. She feels they are a reasonable Board and this is not the way to go about it and there will come a time when the Board does not allow something that is in opposition to their approval. Ms. DiFruscia agreed and stated she remains outraged at what happened.

Ms. Crisler was excused at 11:45pm

Mark Cafua, owner, addressed the Board. He stated this was not done intentionally. The site contractor installed the pads and didn't realize it wasn't supposed to be that way as the majority of their sites have drive through. He stated he takes pride in the building as a resident of the Town.

Extension Request-Case#2013-23/AWAC Lot Line Adjustment

- Ms. Scott explained the conditional approval for this case is about to expire and the applicant has requested an extension for another year while he looks for a buyer.

Mr. Desilets motioned to approve the request for extension for Case #2013-23 for one year, seconded by Mr. Gosselin. Motion passed: 5-0.

Minutes Review/Approve

-August 13, 2014

Postponed

-August 20, 2014

Postponed

Liaison Reports

- Board of Selectmen
- WEDC
- Conservation Commission
- HDC/HC
- Southern NH Planning Commission

August Planner's Report

Member Binder Update

-Planning Board Rules of Procedure (Tab 3)

-Planning Board Member Contact Information (Tab 1)

Old/New Business (Not to include discussion of pending applications or decisions on matters requiring public notice)

Mr. Gosselin motioned to adjourn the September 3, 2014 Planning Board Meeting at 11:50pm, seconded by Mr. Desilets. Motion passed: 5-0.

These minutes are respectfully submitted by Laura Accaputo, Planning Board Minute Taker.

UPCOMING MEETINGS:

September 10th (Master Plan Meeting w/SNHPC)

September 17th

October 1st