

HAMPTON PLANNING BOARD

MINUTES

January 7, 2015 – 7:00 p.m.

PRESENT: Mark Olson, Chair
Brendan McNamara, Vice Chair
Tracy Emerick
Fran McMahan, Clerk
Rick Griffin, Selectman Member
Keith Lessard
Ann Carnaby
Jason Bachand, Town Planner
Laurie Olivier, Office Manager/Planning

ABSENT:

I. CALL TO ORDER

Chairman Olson began the meeting at 7:00 p.m. by introducing the Board members and leading the Pledge of Allegiance to the flag.

II. ATTENDING TO BE HEARD

III. NEW PUBLIC HEARINGS

PUBLIC HEARING FOR ZONING ORDINANCE AMENDMENTS

- Amend Article II – Districts, Section 2.4 to clarify the section title as “Special Flood Hazard Area” and bring this section of the ordinance into compliance with the preliminary Flood Insurance Rate Maps (FIRM) allowing the community to remain eligible to participate in the National Flood Insurance Program (NFIP) once the new FIRM maps become effective. Additional consistency changes, including reference to definitions, are also incorporated. Amend Article XI – Construction Provisions, Section 11.6 to bring the Floodplain Development Regulations section of the ordinance into compliance with the preliminary Flood Insurance Rate Maps (FIRM) allowing the community to remain eligible to participate in the National Flood Insurance Program (NFIP) once the new FIRM maps become effective. Additional consistency changes, including reference to definitions, are also incorporated.

Town Planner Jason Bachand appeared with Town Attorney Mark Gearreald. He presented a PowerPoint presentation on all Amendments for a second public hearing this evening. Mr. Bachand noted the Amendments are available on line for the public as well.

Mr. Bachand provided an overview of the proposed flood amendment. He emphasized that the proposed changes must be adopted for the Town to maintain its eligibility to participate in the NFIP. He also discussed minor changes from the prior meeting involving title and definition adjustments, which resulted in the need for this second hearing.

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Mr. Olson does not have any concerns about this Amendment.

**PUBLIC
BOARD**

MOTION by Mr. Emerick to move this Amendment to the ballot.

SECOND by Mr. Lessard.

VOTE: 7 – 0 - 0

MOTION PASSED.

- Amend Article II - Districts, Section 2.3 to replace all references to “Special Permit” with “Wetlands Permit”, to expand the definition of wildlife habitat to include vernal pools (Section 2.3.1), to add a definition for vernal pools (Section 2.3.2D), to establish standards for very poorly and poorly drained soils (Sections 2.3.2C.1 and 2.3.2C.2), to provide a consistent impervious surface definition (Section 2.3.3), to revert back to previously existing language stating that forestry and tree farming are permitted uses in the Wetlands Conservation District (Sections 2.3.3A.1, 2.3.3B.1 and 2.3.3C.1), to provide more detailed criteria for tree removal (Sections 2.3.3A.2, 2.3.3B.2 and 2.3.3C.2), to remove reference to tree removal under Landscaping (Sections 2.3.3A.8, 2.3.3B.9, and 2.3.3C.9), to identify vernal pools as an area to be protected (Sections 2.3.4B, 2.3.4F and 2.3.4G), and to replace “impermeable” with “impervious” for consistency (Sections 2.3.4B and 2.3.4C).

Rayann Dionne, Conservation Coordinator, appeared with Jason Bachand. They received comments from the Town Manager's Office, which resulted in the need for this second hearing. Two additional changes were discussed and shown on the PowerPoint presentation, which involved consistency regarding an impervious surface definition and replacing the term impermeable with impervious, also for consistency.

**BOARD
PUBLIC**

MOTION by Mr. Emerick to move this Amendment to the ballot.

SECOND by Mr. Lessard.

VOTE: 7 – 0 - 0

MOTION PASSED.

- Amend Article II - Districts, Section 2.8H.2. to modify Section H.2. providing clarification regarding exemptions from off-street parking requirements in the Town Center District through the granting of a conditional use permit, to change the off-site parking space provision from “public” to “available non-public”, and to delete the distance requirement of 500 feet from the proposed use.

Town Attorney Mark Gearreald appeared with Town Planner Jason Bachand and presented a PowerPoint presentation. Mr. Bachand discussed off-street parking of public parking spaces. This language is available on line. This Amendment needs to be heard on the 21st of

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January for a third hearing, due to additional substantive changes. Mr. Bachand handed out the revised Amendment to the Board. Attorney Gearreald discussed 119 Ocean Boulevard and I Street, and parking space issues that happened with that application. The change helps to secure parking spaces that are being offered.

Flexibility on different situations was discussed. Residential situations should be tied to the CO. The Planning Board will dictate the outcome under this Amendment, it would not have to go before ZBA. The word “required” bothered Mr. Olson a bit. Attorney Gearreald discussed the wording “and secured as required by the Planning Board”. Mr. Emerick asked about potentially adding located off site and approved by the Planning Board. Mr. Olson said the Planning Board wants people to come up with solutions rather than have the Planning Board dictate the outcome.

Mr. Bachand discussed this revised Amendment with Mr. Schultz in Building. He was okay with the revised language. The words “as approved by the Planning Board” could work per Mr. Bachand. That works with Mr. Olson and Attorney Gearreald agreed.

PUBLIC

MOTION by Mr. Emerick to move the Amendment to the next hearing (January 21st) with the changes noted.

SECOND by Ms. Carnaby.

VOTE: 7 – 0 – 0.

MOTION PASSED.

- Amend Article II - Districts, Section 2.8C - Permitted uses in Town Center-Historic District and Section 2.8F - Permitted Uses in the Town Center-South and Town Center-North Districts to clarify that permitted uses may require Site Plan and/or Subdivision approval from the Planning Board, and to add a requirement for Use Change approval from the Planning Board for all changes of building occupancy involving any use of a non-residential nature in the Town Center District, each in accordance with Article I - General, Section 1.5 - Planning Board-Site Plan Review. A list of prohibited retail uses in the Town Center-Historic District is also included.

Mr. Bachand appeared with Town Attorney Gearreald. Mr. Bachand discussed this via his PowerPoint presentation. He gave an overview of the newly proposed use change approval requirement, noted a permitted use clarification, and mentioned the current prohibited use language is not changing. He also mentioned Note 4 involving a list of prohibited uses, which is only applied to the Town Center – Historic district as requested by the Board at the last public hearing.

BOARD PUBLIC

MOTION by Mr. Emerick to move this Amendment to the ballot.

SECOND by Mr. Griffin.

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VOTE: 7 – 0 - 0

MOTION PASSED.

- Amend Article III - Use Regulations to add new Sections 3.47 and 3.47.1 regarding firearms and ammunition sales. Firearms and ammunition sales would be permitted throughout the I Zoning District, but only on lots with frontage along Lafayette Road (Route 1) in the B, G, TC-N, and TC-S Zoning Districts.

Mr. Bachand appeared with Town Attorney Mark Gearreald. This Amendment was presented on Power Point.

Mr. McNamara asked about the Districts. With regard to the General District and Business District, the businesses would have to have frontage on Route 1. A change by the Board from the last public hearing was to also include the Town Center-North and Town Center-South districts but only lots with frontage along Route 1. Sales in the Industrial District are permitted entirely.

Ms. Carnaby asked if the Amendment were voted down, what would happen. It was stated that it would be left as is, i.e. firearms could be sold throughout the Town Center District. Ms. Carnaby asked Mr. Emerick why he opposed it. Mr. Emerick said it's a product to be sold and firearms and ammunition sales should not be singled out.

PUBLIC

MOTION by Mr. McNamara to move this Amendment to the ballot.

SECOND by Mr. Lessard.

VOTE: 4 – 3 (Emerick, Griffin & Carnaby) – 0.

MOTION PASSED.

- Amend Article II - Districts, Section 2.1.3 to establish that the Tax Maps as prepared by the Tax Assessor's Office, as overlaid in the GIS mapping system with the Zoning Map, will be utilized for final determination as to zone lines rather than the currently referenced written description of boundaries

Mr. Bachand appeared with Town Attorney Mark Gearreald. This will require a third hearing. Mr. Bachand discussed this with the Assessor's office. The language has been modified to eliminate reference to tax maps. The proposed method involves existing data that can be accessed online and by anyone. The date of the map on the wall should be included. Ms. Carnaby asked if we can say "the most recent" map. Mr. Bachand clarified that the final determination would be through the GIS system itself and not a printed map that could be altered. Mr. McNamara likes the change that the "paper" zoning map is intended for reference only. It was asked if the GIS maps are certified. The GIS system tells one what zone they are in. Mr. McMahan asked about split zones. The GIS mapping shows that now and is accurate.

PUBLIC

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MOTION by Mr. Emerick to move the Amendment to the next hearing (January 21).

SECOND by Mr. Lessard.

VOTE: 7 – 0 - 0

MOTION PASSED.

14-061 14, 16, 18, 20,22 & 26 N Street

Map 293 Lots 114, 115, 116 & 117

Applicants: Chuck Bellemore, MAM Realty Investors, III

Owner of Record: Same

Site Plan: Consolidate tax map 293, Lots 114 through 117 on N Street into one lot. Existing building to be demolished. Construction of 20-unit condominium building.

Attorney Peter Saari asked if Mr. Ross could go before them. North Shore Road. The Board agreed.

14-063 156 North Shore Road (moved from below)

Map 133 Lot 17

Applicant: Ashworth Six, LLC

Owner of Record: Same

Special Permit (Amended): Request of approval of as-built plan due to minor encroachment into 25' buffer with pavers & stone wall.

Mr. Peter Ross appeared. He is seeking approval from the Board for an as-built. The Conservation Commission made some recommendations. Mr. Ross removed pavers and put in crushed stone. He also removed grass in the buffer and added stone.

BOARD

Mr. Emerick asked what a 25' buffer is. They got a variance per Mr. Lessard. Mr. Ross said the building lot was out back. Putting a driveway through the wetlands was discussed.

PUBLIC

Ms. Dionne stated the Conservation Commission struggled with this project. It did get a 25' buffer as a part of the variance. The subdivision and special permit were applied for together. These should have been marked with posts and markers. Ms. Dionne stated that there is no back yard. The Conservation Commission wanted the deck to not be at the rear of the building. The Commission was adamant that the buffer edge be clearly marked and to have no encroachment. Mr. Ross did take the large stones out and replaced them with crushed stone. The Commission is on board with the permeable material there. The Commission did not have an issue with the stone wall, but they are not okay that it went into the buffer. It created the illusion of additional lawn space. The lawn has been torn up and replaced. The

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Commission may not be on board with raking up grass and putting stone. She can't say that what Mr. Ross did can be supported.

Mr. Bachand agrees with Ms. Dionne's Memorandum. He recommends approval with the stipulations of the Conservation Commission. **He noted that revised as-builts should be provided as well.**

Mr. Olson said he remembers when this was subdivided. It is a questionable lot. The Planning Board made a lot of concessions. It is infringed upon a compromised lot. He noted that the Conservation Commission creates these restrictions for reasons. Mr. Ross said they are not encroaching anywhere.

Mr. McNamara asked for the stone wall to be pulled back. He asked how much damage it would do to the difference from where house is to the buffer. Mr. Ross said they have a building permit. The fence would need to be removed and excavator would have to be used to make the changes. Mr. Ross said the building is about 2' from the buffer. Mr. McNamara asked Mr. Ross to pull the wall back to where it needs to be. Mr. Ross can repair it. Mr. Ross will do this if they need to.

MOTION by Ms. Carnaby to grant the amended special permit along with the stipulations contained in the Conservation Commission's letter December 29, 2014.

SECOND by Mr. Emerick.

VOTE: 6 – 0 – 1 (McNamara)

MOTION PASSED.

14-061 14, 16, 18, 20,22 & 26 N Street (MOVED from above)

Map 293 Lots 114, 115, 116 & 117

Applicants: Chuck Bellemore, MAM Realty Investors, III

Owner of Record: Same

Site Plan: Consolidate tax map 293, Lots 114 through 117 on N Street into one lot. Existing building to be demolished. Construction of 20-unit condominium building.

Mr. Cornati appeared and Chuck Bellemore was in the audience. There are 16 units on this altogether. The proposal is to demolish everything.

This is to build 20, 2-bedroom units. Mike Keane (Architect) appeared and described the building. Parking is on the lower level.

Three floors of two-bedroom units are above. The fourth floor has an outside common deck. Traditional materials will be used. Clapboard shakes will be used. They received a variance for heights on the pitched roofs. Planting beds were raised and a stone wall was added to add definition to the street line. There is an elevator in the building. The sidewalks are on both sides. There will be a new sidewalk along the front. All sections of curbing will be removed. There are currently 7 buildings and 16 units on 4 lots. The sidewalk curbing will be granite. The current structures are not year-round. Once built, these will be year-round. These will be condominiums. This went before the Beach Commission per the applicant.

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Mr. McMahon took himself off that meeting. **Bob Preston could send the Planning Board a note confirming this went to the Beach Commission.** Mr. Coronati said he believes they did speak at the Zoning meeting.

Mr. Coronati discussed one curb cut. Three out of four curb cuts have been eliminated. Parking spaces are EcoPavers. Stormwater from parking lot and the small amount of rainfall that falls off the gable was discussed. Most water gets caught on the roof deck. There is a StormTech system. There are 16 parking spaces outside; 20 inside. Sewer and water connections are available. Landscaping is along the front. Lighting is from the building. No light poles are needed. The neighbor from the west discussed lights from the cars, so a 3-foot fence is added. They added it on top of a wall to block lights.

BOARD

Mr. McMahon discussed the first two spaces. Those are handicapped spaces and one is a non-parking space. There is one outside and one inside. One space is 16'. Mr. McNamara asked where the handicapped sign is. One is mounted on the wall. Ms. Carnaby asked about access exiting being only located in one spot. Ms. Carnaby asked what would happen if there were a fire at the entrance. There is no way to get out. The cars may be stuck in there, but people can get out. This lot is in two zones. Transformer location was discussed. Mr. Lessard stated we do not like transformers against property lines because of neighbors. Noise of transformers was discussed; i.e. humming, etc.

Mr. McNamara asked about snow storage. He asked where it will be removed to if it needs to be removed off site. It depends on the contractor.

Mr. Emerick stated the trash could be picked up by the Town. Trash could be put on N Street. It was asked if there is a reason it can't be on N Street. It will stay private pick up. Mr. Emerick said they have every right to have trash pick up.

Ms. Carnaby asked about outside recreation space (lack of). There is no lawn; the whole area is building with no recreational area. This is one more box which violates the esthetics of the Master Plan; Route 1 By-Ways Commission and everything else held dear to Hampton Beach. She doesn't understand why.

Mr. Coronati said there is not much lawn area down there.

Ms. Carnaby noted that many people would not want to live here; it would be a different population. The beach horizon will be tall buildings. Ms. Carnaby wants to be on record defending the By-Ways views and the Master Plan.

PUBLIC

Ms. Dionne appeared. At the PRC it came up about impervious surface calculations. She asked if it was better detailed on how they got to their numbers. They asked for a better understanding of the impervious surface calculation. Getting 72.1 percent was asked about and how that was achieved.

Mr. Olson said they broke it down to what takes up that sealed surface. Mr. Olson asked Mr. Coronati to quantify that. Ms. Dionne wants the data; she stated it is on the plans. It is

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within .2 of a percent. **Ms. Dionne said she needs as-builts;** it makes this even more important. Joe Coronati will require an as-built.

Mr. Lessard asked why pervious pavement is not being used. Mr. Coronati said it will look nicer. Mr. Lessard asked about decreasing the sealed surface on the driving area. Mr. Coronati did not look into that. The driveway area can be porous area. The decorative lots can stay the same; leave porous pavement in the travel lane. It is about 2,500 extra square feet. Mr. Coronati said he would probably do the whole parking lot in porous.

Mr. Olson asked about the StormTech system supporting the permeable surface. StormTech is for the roof; the parking lot is separate. The water will go into the ground. Mr. Coronati said they will switch the whole parking lot to porous pavement. It puts them under 75 percent. Ms. Dionne likes having that buffer.

Mr. Bachand said an issue was brought to his attention today. He noted that Mr. Coronati talked about the proposed 2-foot high wall with 36" fence along parking area. The Warranty Deed on the property stated ornamental fences of not more than 3' height in that area can be erected. He received a call regarding this. Mr. Bachand spoke with the Town Attorney and Town Manager to verify. If it is determined to remove the fence restriction from the Warranty Deed, it would require a warrant petition to remove it from the deed.

Town Attorney Gearreald discussed applications for site plans and leased land. Whenever the land is leased land, the applicant is required to supply the original deed that sets forth deed restrictions. The proposal needs to comply with the Deeds. Deed restrictions are owned by the Town. Warrant Articles (petitioned) are on the warranty to remove deed restrictions. Some are granted; some are not. This is a new 2-foot concrete wall, but the proposal is to add a 3-foot fence which makes a total of 5 feet. It violates the restriction. The two-foot wall (if even considered decorative), is not a retaining wall, and not a part of the building; it's acting as a fence. Attorney Gearreald said it is a problem. To put a 3' fence on top of a 2' slab—he believes the Building Inspector would be told to not issue the building permit.

Mr. Bachand discussed possible conditional language covering this issue and that the applicant may need to revise the site plan. The petitioned warrant article would have to be in by the 13th of January. The applicant wants to build starting March 1st.

Mr. McMahon said a building permit will not be issued. Attorney Gearreald said it is a standing order.

Mr. Coronati said they will then put up a three-foot fence. **They will also talk with Mr. Schultz.** The neighbor could do a 30-day appeal with headlight issue.

Mr. Olson said a 25-person petition would need to be addressed.

Mr. Charlie Preston appeared. He called earlier and asked about this. He asked for the petition signatures to be signed. There originally was a chain-linked fence, they put up a wall. He asked for the project to not be held up and getting 25 signatures will be easy enough. The petitioned warrant article was discussed. Mr. Olson thinks getting this on the ballot is simple and he asked Mr. Coronati to get this going. Mr. Bachand said this deed information is important for the Board to know.

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Mr. Bachand discussed proposed Condition #14 regarding bonds. He wants construction cost estimates within 14 days of approval. The applicant would provide within 30 days confirmation that an irrevocable letter of credit will be provided. This pertains to on-site improvements.

Mr. Coronati asked if this may be consistent on all future applications, ie., needing confirmation that an irrevocable letter of credit be provided. Mr. Coronati said bonds are simple regarding putting in Town roads, etc. He believes bonding should not go with the building. Attorney Gearreald clarified bonds would not go to the building itself. Eco-pavers and other on site problems happened on Keefe Avenue. Site improvements were not completed. It is not for the new building itself, but for on site improvements per Attorney Gearreald. Off -site improvements – that is separate. They would need to appear to the Board of Selectmen for off-site improvements. Mr. Coronati confirmed he is going before the Board of Selectmen. On site would be fine. If items aren't completed at time of CO, that does get bonded. This would take care of landscaping also.

Mr. Lessard asked about this bonding change not being discussed with the Board. The Board talked about wells recently; now bonding before CO's; no street lights, hydrant issues, etc. He is concerned that this is the first time they are seeing this. **Mr. Lessard thinks this should be a part of a work session.** Mr. Lessard does not want to see this for the first time during an application process. Mr. McNamara agrees. Mr. Emerick said a lot of things go on after approvals.

Mr. Olson said if an applicant is seeking a CO and things aren't complete, then it would trigger a bond.

Mr. Bachand discussed how this came about. Issues with the 376 Winnacunnet Road subdivision brought this to a head. Mr. Bachand wants the Planning Office/Board to handle more on the front end. Mr. McNamara asked about #26 of Planner's Memorandum (Lot Merger). It was confirmed they can do this without coming before the Board.

Mr. Coronati asked about Condition #12. **“No Mow” language and ivy...Mr. Bachand stated that is a carry-over. That will be struck.**

Mr. Coronati asked about the condition on monumentation – **he said “prior to certificate of occupancy” should be added.**

Applicant will use porous pavement. Mr. Lessard asked about Condition #14. Mr. Emerick said it should be excluded (#14).

The transformer should be addressed and arborvitaes. **The fence needs to be addressed. The concrete wall behind the transformer needs to be addressed.** Keeping the neighbors happy was discussed.

MOTION by Mr. Emerick to approve the site plan along with the conditions in the Planner's Memorandum dated January 7, 2015, excluding Condition #14 and with edits on Condition #12 regarding the O&M containing “no mow” language and low growing ivy coverage language. The parking lot will be constructed using permeable asphalt. If a warrant article passes regarding decorative fence height, it should be petitioned to be allowed to be as large as allowed by law.

SECOND by Mr. McNamara.

VOTE: 6 – 0 – 1 (Carnaby)

MOTION PASSED.

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14-062 128 Ashworth Avenue

Map 290 Lots 150

Applicant: Don Garcia, Donik Corporation

Owner of Record: Ernest and Diana Powell

Site Plan: Remove existing structures and construct a condominium building with ground floor parking. The 32-unit building will consist of sixteen 3-bedroom units and sixteen 1-bedroom units.

Mr. Joe Coronati appeared with Mr. Michael Keane (architect) and Attorney Peter Saari. Keith Lessard recused himself.

Mr. McMahon said the Board should receive architectural drawings at the onset of an application; not on the night of the meeting. Mr. Olson said it was suggested to push this out. Mr. Coronati wants to discuss this application with the Board tonight. Mr. McNamara said he believes the Board will still ask for a continuance.

Michael Keane appeared (architect). The site is surrounded by roads on three sides. The proposal is to take down the motel (Summerwind). Thirty-two units are proposed; 16, one-bedroom; and 16, 3-bedroom units.

Michael Keane discussed the architectural drawings. Parking is under the building. There are two different driveways. Recreational space was shown. The second floor will contain 16, one-bedroom units. The 4th floor is where the 3-bedroom units begin. There is an elevator. The second egress on the 4th floor is not required. It is a sprinklered building. They are within the 50' height requirement. The fourth floor has roof decks.

Ms. Carnaby applauded the design details and varying roof lines. She thinks it is attractive. She is happy there is some green space also.

Mr. McNamara asked about the variance being requested on parking spaces. Mr. Coronati stated 68 are required; they are asking for 52 spaces and that is a big difference. Zoning granted the variance. There being only 4 visiting spaces was discussed.

Mr. Olson discussed lobby space.

Wheelchair accessibility was discussed. An entrance porch was discussed.

Mr. Coronati discussed the site. The building is rectangular; the site is not. They moved the building away from Auburn Ave Extension. Stormwater is being collected in StormTech system. The building will be above the flood plain.

When the applicants went to the Zoning Board to deal with sealed surface they used just the building, not the overhangs. They did not include transformer pads. They thought they were under 75 percent. When you include overhangs, 4.6 percent more sealed surface occurs. The applicants are going to the Zoning Board next week. The applicants do not want to remove the overhang. The sidewalk along Auburn Avenue and Auburn Avenue Extension was discussed. Mr. Coronati spoke with his clients. They are willing to do porous material on the sidewalk. Open space calculations will not be affected. There is porous asphalt that they could use.

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The maintenance of the sidewalk was discussed. Per Mr. Coronati, in the winter there are not many people walking in that area. The applicant is willing to install the sidewalk. He does not see why they would have to remove snow from that sidewalk. It was noted that Public Works sent a letter.

Mr. McNamara said a brand new 36-unit building will be built. There will be a lot of activity and the sidewalk will need to be maintained. With sand build-up, the sidewalk will no longer be pervious. He does not think their idea is realistic. **A new O&M will need to be prepared.** Mr. Coronati said the Town will push snow on the sidewalk. The applicant does not want to take care of sidewalks.

Mr. Coronati noted that the lettered streets are not plowed. Mr. Emerick does not see the mechanics of Public Works. Mr. Bachand stated the DPW and Fire want sidewalks dealt with. This was discussed with the Town Manager. Mr. Bachand said the memos just came to him yesterday. DPW and Fire said it is a public safety issue. They need to be concrete as well.

Mr. McNamara wants to wait to hear what they say and get a resolution from the DPW and Fire on how to proceed and then he is happy to proceed on the project.

Mr. Olson said he is pro-sidewalks. He asked about the variance needed.

Mr. Bachand said pervious could become impervious. Concrete is more durable. Mr. Emerick asked how an overhang is impervious.

Mr. Olson asked them to make it concrete. Mr. Coronati said it would push them beyond 80 percent. Mr. Coronati said this is a timing issue as well.

Mr. Emerick said the PRC should have dealt with this. Mr. McNamara said it should not be dismissed. Mr. McNamara wants this delayed for two weeks.

If the vote does not pass with the ZBA, the overhangs will get cut off.

Mr. Bachand said Condition #14 should be stricken (based on Board discussion on the last application). No-mow language got carried over on this Memo as well (Condition #12). Condition #17 talks about the sidewalk, and does designate it as being concrete. If permeable along Auburn Avenue and Auburn Avenue Extension, that should be changed. Condition #26 is about ZBA approval. The Board noted it could do an approval with permeable sidewalk. It is a private sidewalk.

If the Planning Board approves this, the applicant still has time to go before the Zoning Board to ask if the Town wants a solid sidewalk. It has to be adjacent to the right of way.

PUBLIC

MOTION by Mr. Emerick to approve the site plan, Condition #14 is to be excluded. Condition #12 to be revised to omit the ‘no mow’ language and low-growing ivy coverage language. All other conditions to remain in accordance with the Town Planner’s Memorandum dated January 7, 2015.

SECOND by Ms. Carnaby.

VOTE: 5 – 1 (McNamara) – 0

MOTION PASSED.

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14-064 220 Towle Farm Road

Map 155 Lot 4

Applicant: Rich and Angelia Drake

Owner of Record: The KD Trust, Rich & Angelia Drake, Trustee

Condominium Conversion: Conversion to two-family home into condominium form of ownership. Waiver Request: Section V.E. Detailed Plan.

Mr. and Mrs. Drake appeared. Alden Beauchemin (Engineer with Keyland) appeared. They are doing a condominium conversion from a two-family to a duplex.

BOARD

Ms. Carnaby asked what the advantage of a condominium conversion was. Mr. Drake feels it would make the property more valuable.

PUBLIC

Mr. Bachand said it is a straightforward project and he recommends approval subject to the conditions in his memo. He reminded the Board the waiver needs to be voted on as well.

MOTION by Mr. Lessard to grant the waiver request.

SECOND by Mr. Emerick.

VOTE: 7 – 0 – 0

MOTION PASSED.

MOTION by Mr. Lessard to grant the condominium conversion and site plan Job #2014131 subject to the conditions of the planner's memo.

SECOND by Mr. Emerick.

VOTE: 7 – 0 – 0

MOTION PASSED.

14-065 18 Hutchinson Drive

Map 167 Lot 17

Applicant: 18 Hutchinson Drive, LLC

Owner of Record: Same

Special Permit (ATF): Added fill & regraded buffer area adjacent to home; repaved area to rear of bulkhead. Area to be loamed, seeded and vegetated.

Lyman McCrea appeared. He received and is in agreement with Conservation Commission letter.

Mr. Bachand viewed the property and also is in agreement with the Conservation Commission stipulations. He recommended approval subject to those stipulations.

MOTION by Mr. Lessard to grant the special permit along with the stipulations contained in the Conservation Commission letter dated December 29, 2014.

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SECOND by Mr. Emerick.

VOTE: 7 – 0 - 0

MOTION PASSED.

14-066 60 & 62 Glade Path

Map: 273 Lots: 6-1 & 6-2

Applicant: Glade Path Condominium Assn.

Owner of Record: Janice Drummey Living Trust Michael and Joanne Simone, Trustees

Special Permit: Stabilize berm using permeable landscape fabric; rip-rap along rear property & marsh borderline.

Mr. John Drummey appeared and discussed erosion on his property. His neighbor already did the same type of work. Mr. Drummey has the letter from the Conservation Commission and in agreement with its stipulations.

Mr. Bachand viewed the property and agrees with the recommendations from the Conservation Commission.

MOTION by Mr. Lessard to approve the special permit in accordance with the stipulations contained in the Conservation Commission letter dated December 29, 2014.

SECOND by Mr. McNamara.

VOTE: 7 – 0 - 0

MOTION PASSED.

14-057 31-33 Ocean Boulevard (Decision of 12/3/14 vacated/PB voted 12/17/14 to re-notice & re-hear)

Map: 296, Lots: 20, 32 & 33

Applicant: Steve Pascoe, AAA General Contracting, Inc.

Owner of Record: NTC Real Estate Development, LLC, Keith Crowley

Site Plan: Remove existing seven cottages & construct a four-story building (12 Units) with associated parking and upgraded utilities.

Mr. Olson asked about the recent concerns of the abutter regarding trash, storage, etc. Ellen O'Brien contacted the Planning Office via email this afternoon. Mr. Bachand distributed copies of her email to the Board and read it aloud.

This was a previously leased parcel per Attorney Saari. Trash is internal to the building. There is no dumpster. Pick up of trash will occur as frequently as needed.

The fence stops at the end of the parking lot. The fence will not be a 6' high for privacy.

PUBLIC

Mr. Bachand wants Condition #14 struck from his memo (based on Board discussion on two earlier applications). He also said to edit #12 by removing the “now mow” and low-growing ivy language.

Mr. Lessard asked about the fence. He thinks the woman wants a fence along the whole property line. It was noted that the fence stops with the building. The applicant will talk

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with his neighbor and work out an agreement between them. Negotiations with the abutter regarding the fence will take place.

MOTION by Mr. Emerick to grant the site plan, excluding Town Planner's Condition #14, editing Condition #12 as noted above, and negotiating with the neighbor regarding the length of the fence. Condition #21 will contain the first sentence only; the remainder will be excluded from the condition.

SECOND by Mr. McNamara.

VOTE: 7 – 0 – 0

MOTION PASSED.

IV. CONTINUED PUBLIC HEARINGS

V. CONSIDERATION OF MINUTES DECEMBER 3, 2014 & December 17, 2014.

MOTION by Mr. Emerick to approve and accept the December 3, 2014 Minutes.

SECOND by Mr. McNamara.

VOTE: 6 – 0 – 1 (Lessard)

MOTION PASSED.

DECEMBER 17th Minutes

MOTION by Mr. Lessard to accept and approve the December 17, 2014 Minutes.

SECOND by Mr. Emerick.

VOTE: 7 – 0 – 0

MOTION PASSED.

VI. CORRESPONDENCE

VII. OTHER BUSINESS

• **CIP**

Mr. Emerick discussed that as a part of the packet, there is a CIP report from the CIP Committee. This needs to be approved and given to the Board of Selectmen and Town Manager's office.

MOVED by Mr. Emerick to approve the CIP report.

SECOND by Mr. Lessard.

VOTE: 7 – 0 – 0

MOTION PASSED.

MOTION by Mr. Emerick to have the Planning Board hire Attorney Peter Loughlin to review a recent letter from the Town Manager regarding street lights. He has two issues with this that he wants outside legal opinion on. He wants to know if the Town Manager has the authority to suspend regulations by letter or any other form; overriding the Planning Board and its Subdivision and Site Plan Regulations.

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The second question is: Does the Planning Board have the ability to commit Town resources. The essence of the letter is stating that the Planning Board does not have authority for street lights and fire hydrants-(Police, Fire and DPW). When the Planning Board gives subdivision approval, the Board is committing to the applicant that police will be there, if needed, and fire will appear if a house is burning down, etc. **Mr. Emerick wants to know what authority the Planning Board has.**

SECOND by Mr. McMahon to have a discussion on this matter.

Discussion was had regarding the Town budget and line items. He doesn't think we are creating something that does not already exist. There is always flexibility.

Mr. McMahon said since utilities are proposed to be installed underground, there is an issue with fixing them. The Town is stating it cannot maintain them. Soon, everything will be underground.

Mr. Emerick said the Town is making these issues the applicants' problem. Applicants now have to go to the Board of Selectmen. The Planning Board agrees with Mr. Emerick. Mr. Emerick wants to know what's legal. He does not think the Manager/BOS have the right to tell the Planning Board what to do. This is no different from the sidewalks, which we learned about tonight. We are the land use board. Mr. McMahon said we are ending up with a hodge-podge; it's going to get confusing. Mr. Emerick talked to Mr. Bachand. He asked who is the authority and it's not because of cost. Cost is not and should not be the issue of the Planning Board. Mr. Emerick said he wants a light at the intersection on 376 Winnacunnet Road. If the Board needs to review Subdivision Regulations and Site Plan Regulations, we need to know. Mr. Emerick wants a legal opinion. Mr. McNamara asked to meet first with the Town Manager and BOS.

Mr. Emerick wants the legal opinion. Our legal is covered from legal account.

MOTION by Mr. Emerick to retain Peter Loughlin and obtain his legal opinion.

SECOND by Mr McMahon.

VOTE: 5 – 1 (McNamara) – 1 (Griffin)

MOTION PASSED.

VIII. ADJOURNMENT

MOTION by Mr. Lessard to adjourn.

SECOND by Ms. Carnaby.

VOTE: 7 – 0 – 0

MOTION PASSED.

MEETING ADJOURNED: 10:18 p.m.

Respectfully submitted,

Laurie Olivier, Administrative Assistant

****PLEASE NOTE****

ITEMS NOT CALLED OR IN PROGRESS BY 10:00 P.M.

MAY BE CONTINUED TO THE NEXT SCHEDULED MEETING