

**Pembroke Planning Board
Minutes of Meeting
(Adopted)
January 26, 2016**

MEMBERS PRESENT: Alan Topliff, Chairman; Brian Seaworth, Vice Chairman; Kathy Cruson; Robert Bourque; Larry Young, Sr.; Kevin Krebs; Fred Kline, Selectmen's Rep.

ALTERNATES PRESENT: Brent Edmonds

EXCUSED:

STAFF PRESENT: Stephanie Verdile, Town Planner; David Jodoin, Town Administrator; Everett Hodge, Code Enforcement Officer; Jocelyn Carlucci, Recording Secretary

Chairman Topliff called the meeting to order at 7:00 p.m. He said that since the first two agenda items were with the same applicant, the Board would handle them simultaneously which is the Board's standard practice.

New Business –

1. **Special Use Permit Application SUP-AC #16-301 John's Wrecker Service on Tax Map 561, Lot 35, located at 107 Sheep Davis Road, in the Commercial/Light Industrial (C1) and the Aquifer Conservation (AC) District.** The applicant, Mark Sargent, of Richard Bartlett & Associates, LLC, on behalf of the property owner, John Dapergolas, requests a Special Use Permit from Article 143-68.E, Aquifer Conservation District, which is required for any activity taking place within the District. This permit is associated with the Major Site Plan Application Site #16-101.
2. **Major Site Plan Application #16-101, John's Wrecker Service on Tax Map 561, Lot 35, located at 107 Sheep Davis Road, in the Commercial/Light Industrial (C1) and the Aquifer Conservation (AC) District.** The applicant, Mark Sargent, of Richard Bartlett and Associates, LLC, on behalf of the property owner, John Dapergolas, Inc., proposes a Change in Use of an existing, vacant, commercial facility to permit an automotive wrecker, maintenance, outside storage facility with associated office space.

Chairman Topliff said that it is the Board's practice not to engage with the applicant or the public until the Board is in public hearing. The reason that the Board does so is to ensure that anyone who has an interest in this particular application is present for the entire conversation and does not miss out on key information.

Ms. Verdile said that the applicant submitted a special application to the Zoning Board of Adjustment (ZBA) at the same time as the Major Site Plan with the Planning Board. The ZBA met on January 25, 2016 and declared the application a Development of Regional Impact. She explained that Concord and the NH Regional Planning Commission would be notified and sent plans and provided an opportunity to come to the ZBA public hearing in February to comment on the application. It was also stipulated that the ZBA wanted, upon the recommendation of the Pembroke Water Works Commissioners, a hydro geologist to meet with the applicant and go over the application and come up with recommendations.

She told the Planning Board that they had the ability to (1) agree with the ZBA and also declare it a Development of Regional Impact and follow suit with the ZBA by continuing the application, notifying Concord and the NH Regional Planning Commission along with abutters. This would mean that the application would not move forward tonight; (2) Acknowledge that the ZBA declared the application as a Development of Regional Impact and let that process go through; or (3) not declare it a Development of Regional Impact and handle it as a normal application and consider the waiver requests. Once the waiver requests were considered, the Board could then open a public hearing and allow the applicant to speak and review what was said at the January 25, 2016 ZBA meeting in order to inform everyone of all the information.

Ms. Verdile also said that, in the past, another application came before the ZBA prior to the Planning Board and the ZBA declared the application to be one of Regional Impact. The Planning Board, at that time, felt that having a duplication of efforts (money, time, energy, plans, etc.) on the applicant was unnecessary and allowed the applicant to go through the Regional Impact Process with the ZBA and received copies of comments from the NH Regional Planning Commission on the plan for the application at that time. She said that the Planning Board, in no way, relinquishes anything by allowing the applicant to go through the Regional Impact process with the ZBA. It merely allows for streamlining the process and eliminating duplication of efforts.

Chairman Topliff said that if the Planning Board does not find it to be a Development of Regional Impact, then Concord and the NH Regional Planning Commission would not be considered abutters and, therefore, would not have the same opportunity to engage in the Planning Board process. They would only have the opportunity to engage in the ZBA process and not the project, as a whole, that the Planning Board would be considering.

Ms. Verdile said that the application to the ZBA is for three special exceptions. Concord and the NH Regional Planning Commission will receive a copy of the same plans that were received by the ZBA and the Planning Board.

Chairman Topliff said that the Planning Board can still consider the waiver requests and the application's completeness. The only thing that they cannot do is open a public hearing because Concord and the NH Regional Planning Commission would not be able to engage in the process until they are notified.

Member Young asked why the ZBA considered it a Development of Regional Impact. Mr. Hodge replied that the Statute stipulates that if there is an aquifer that spans to other municipalities, it can be determined a Development of Regional Impact because of the aquifer. The aquifer extends into Concord and Pembroke.

The consensus of the Board was that the application was a Development of Regional Impact.

MOTION: Member Bourque moved to declare the application a Development of Regional Impact. Seconded by Member Krebs.

VOTE: K. Cruson – Y K. Krebs – Y B. Seaworth – Y
 A. Topliff – Y F. Kline – Y L. Young – Y
 R. Bourque - Y

MOTION TO DECLARE THE APPLICATION A DEVELOPMENT OF REGIONAL IMPACT PASSED ON A 7-0 VOTE.

Ms. Verdile said that following are the Waiver Requests: Part A – C, G, L; Part B – 6, 7, 11, 16, 19, 20; Part C – A, B, C, D, E, F because they are all inapplicable.

Ms. Verdile said that there would be no increase in pervious area.

Member Bourque said that in the demolition of a building there could be erosion and runoff which would require a silt fence. He said that unless the overflow parking area is paved, it would create the same issue (runoff and erosion). Moving vehicles in and out of an area will cause dirt to wash away. He said that some type of erosion and sediment controls would be necessary. He felt that Part C – A and E should not be waived.

Mr. Hodge said that he issues demolition permits and reviews how they will leave and maintain the site. The applicant is required to notify Pembroke Water Works and the Sewer Department. He looks at runoff and makes recommendations for temporary runoff and silt fencing.

Chairman Topliff said that when someone applies for a demolition permit and the project does not come before the Planning Board, Mr. Hodge looks at all the issues such as erosion, and runoff. He said that by Mr. Hodge doing so, the Planning Board does not have to duplicate the effort and, therefore, the applicant can ask for a waiver to Part C - A and E.

Member Cruson said that she also felt that erosion and sediment control should be monitored especially in light of the fact that this project would proceed through the winter and into spring.

Ms. Verdile said that staff has not discussed with the applicant how construction requirements might apply to demolition outside of what Mr. Hodge normally does. She added that on new construction or on a reuse of a building, the Planning Department holds preconstruction onsite meetings. At that time, silt fencing and erosion control are discussed. They also have a few other checks and balances. The Major Site Plan Checklist is geared for the development of a vacant lot. The checklist does not fit perfectly into an existing building scenario. The Planning Department is also required to do things with the Town Engineer. She said that the applicant is not installing anything new at this time or tearing anything out.

Vice Chairman Seaworth said that he thought that the parking waiver was usually discussed during the review of the application as opposed to accepting the application without knowing what the applicant was doing.

Chairman Topliff thought that once the waiver was requested, the Planning Board could only grant or deny it. If the waiver is denied, the applicant would be required to resubmit their application showing compliance with the zoning ordinances and during deliberation the Board could choose to relieve them of some of the requirements.

Vice Chairman Seaworth said that the Board would want to open the public hearing before deciding if the parking waiver is appropriate. He said that the checklist waivers must be considered before opening the application, but not other zoning ordinance requirement waivers such as parking.

After a lengthy discussion and researching the topic, Chairman Topliff read aloud, Page 63, Section 143-45-1 Parking Requirement Modifications.

Chairman Topliff concluded that Vice Chairman Seaworth was correct. Since it is not something that affects completeness of the application, parking is a requirement, the applicant may ask for reduced parking, and it is something that is difficult to understand until the Board has had input from the applicant, he said that the Board does not need to vote on the parking waiver until the completeness of the application has been voted on.

MOTION: Member Krebs moved to grant the waiver requests for checklist items: Part A- Items: C, G, and L; Part B-Numbers: 6, 7, 11, 16, 19, and 20; Part C- A, B, C, D, E, F. Seconded by Vice Chairman Seaworth.

Member Bourque said that Item E (Erosion and Sediment Control) should be provided. Member Cruson agreed.

VOTE:	K. Cruson – N	K. Krebs – Y	B. Seaworth – Y
	A. Topliff – Y	F. Kline – Y	L. Young – Y
	R. Bourque - N		

MOTION TO GRANT THE WAIVER REQUESTS FOR CHECKLIST ITEMS: PART A- ITEMS: C, G, AND L; PART B-NUMBERS: 6, 7, 11, 16, 19, AND 20; PART C- A, B, C, D, E, F PASSED ON A 5-2 VOTE.

MOTION: Vice Cairman Seaworth moved to accept the application as complete. Seconded by Member Krebs.

VOTE:	K. Cruson – Y	K. Krebs – Y	B. Seaworth – Y
	A. Topliff – Y	F. Kline – Y	L. Young – Y
	R. Bourque - N		

MOTION TO ACCEPT THE APPLICATION AS COMPLETE PASSED ON A 6-1 VOTE.

Chairman Topliff said that normally the next step would be to open a public hearing but since the Board has concluded that the application is a Development of Regional Impact, the Board is unable to do so because Concord and NH Regional Planning Commission have not been notified.

Ms. Verdile said that the applicant has received a copy of the Planner review notes.

Chairman Topliff referred to the Change of Use Plat and said that he would eventually like to know what "w/f fuel storage" meant. Mr. Hodge said that the ZBA did not take any testimony from the applicant. The meeting was continued to February 22, 2016.

Chairman Topliff also asked if the applicant was offering their site as a place to store campers, RVs, etc. He said that he had some real concerns about wrecks being towed in with fuel tanks, hoses, radiators, etc. leaking and having those vehicles towed and parked at this site on anything other than a surface that had the ability to collect, treat or store any fluid leakage from the vehicles. There is a sizable stream that runs into the Soucook River and it is reasonable to assume that any runoff could soak into the ground or would get into the river.

Member Cruson said that she is also concerned of wrecks and the possible site used as an outside storage facility. The site is over the aquifer and the Board certainly does not want to make a mistake and contaminate the aquifer. It is our only aquifer.

MOTION: Member Bourque moved to continue consideration of Agenda Item 1 and 2 to the February 23, 2016 meeting. Seconded by Vice Chairman Seaworth. Unanimously approved.

The Board recessed at 7:53 p.m.

Chairman Topliff reconvened the meeting at 7:55 p.m.

3. **Special Use Permit Application, SUP-AC #16-302, Next Level Church, 79 Sheep Davis Road, LLC, on Tax Map 561, Lot 6, located at 79 Sheep Davis Road, in the Commercial/Industrial (C1) Zone and the Aquifer Conservation (AC) District.** The applicant, Tony Fallon of Tony Fallon Architects, on behalf of Next Level Church and 79 Sheep David Road, LLC, requests a Special Use Permit from Article 143-68.E, Aquifer Conservation District, which is required for any activity taking place within the District. This permit is associated with the Major Site Plan Application Site #16-102.
4. **Major Site Plan Application #16-102, Next Level Church, 79 Sheep Davis Road, LLC, on Tax Map 561, Lot 6, located at 79 Sheep Davis Road, in the Commercial/Industrial (C1) Zone and the Aquifer Conservation (AC) District.** The applicant, Tony Fallon of Tony Fallon Architects, on behalf of Next Level

Church and 79 Sheep David Road, LLC, proposes to remodel an existing commercial building and associated parking areas to locate a church.

Ms. Verdile said that the applicant received a variance from the ZBA to operate a church in the C1 Zone (see minutes from the November ZBA meeting).

They submitted another application to the Planning Board. Ms. Verdile included in the staff report the minutes and issues that the Board discussed at the September Planning Board meeting. When she was reviewing the waiver requests and reviewing both applications, the information was unchanged from the previous application to this application as far as the waiver request information submitted.

Ms. Verdile included the information from the previous meeting where the Board discussed the waiver requests and at that September meeting, the waiver requests were denied and the application was deemed incomplete. There have been no changes to the application at this time. Ms. Verdile said that she could not support the waiver requests and would leave it to the discretion of the Board to decide. In the staff report, she has prepared motion language should the Board choose to grant the waiver requests. If the Board does not grant the waiver requests, there is motion language also prepared in the staff report.

If waiver requests are not granted, the same result as in the September meeting would result -- the application would be deemed incomplete and does not go any further and the applicant would reapply and go through the process again.

Chairman Topliff said that he agreed with Ms. Verdile. Looking at the plans, they show moving a drive-thru lane, extending a concrete apron, new walkways in several places, and have not submitted construction plans and they are asking for a waiver from that.

Member Bourque said that nothing had changed from the last time that the Board saw the application. He saw no reason to waive any of the requests.

Selectmen's Rep. Kline, Members Cruson and Krebs and Vice Chairman Seaworth all agreed with Member Bourque.

Chairman Seaworth said that there was a clear consensus that the Board wanted to see more information submitted.

One of the applicant members began to speak, but Chairman Topliff said that the Board does not accept any comments from the applicant unless the Board is in public hearing. It is the Board's practice.

The applicant member said that it was not a factual statement that there were no changes to the application.

Chairman Topliff said that he was sorry but the Board would not engage with the applicant at this time.

Member Bourque asked Ms. Verdile if the applicant was informed the last time what was needed and why it was denied. Ms. Verdile responded yes, in the Notice of Decision.

MOTION: Member Bourque moved to not approve the waiver requests for this application. Seconded by Member Cruson

Chairman Topliff explained that, in this case, a vote in the affirmative would be in support of Member Bourque's motion which is to deny the waiver requests. If a member votes no, it is a disagreement with Member Bourque's motion.

VOTE: K. Cruson – Y K. Krebs – Y B. Seaworth – N
 A. Topliff – Y F. Kline – Y L. Young – N
 R. Bourque - Y

MOTION TO NOT APPROVE THE WAIVER REQUESTS FOR THIS APPLICATION PASSED ON A 5-2 VOTE.

Chairman Topliff said that the waiver requests have not been granted therefore the application is incomplete and cannot be considered for completeness. He also encouraged the applicant to work with the Town Planner and provide the additional information.

MOTION: Vice Chairman Seaworth moved to continue Agenda Items 3 and 4 to the Planning Board's next business meeting on February 23, 2016. Seconded by Member Young. Unanimously approved.

Member Bourque asked if the applicant would have to reapply. Vice Chairman Seaworth said no, because the Board did not deny the application.

Chairman Topliff said that the Board did not continue the application at the September meeting because the applicant did not get the variance from the ZBA. The application as submitted did not meet a key component of the zoning ordinance and there was no way that they could provide a compliant application in light of the ZBA's denial. They were asking for a non-permitted use so they were dismissed solely on the fact that they were asking for a use that was not permitted.

Vice Chairman Seaworth said that they confirmed with Town Counsel that this was an appropriate way to handle such cases. Chairman Topliff said that if Vice Chairman Seaworth had not made the motion, the applicant would have had no choice but to reapply, notice abutters, etc. And the Board really did not want to do that because it is expensive.

Old Business – Public Hearing for 2016 Zoning Amendments.

Ms. Verdile said that she and Everett discussed with Town Attorney the latest language for Zoning Amend #4.

She noted that this was the Board's last chance to put forth the zoning amendment. They also reached out to the Local Government Center (LGC) for another opinion. Town Counsel said that the current language could be considered "a taking". Ms. Verdile said that she and Everett are concerned about the way that the language is written now and the problems that it could create by allowing a house to be placed on a property line.

Ms. Verdile reported that LGC did not find any issue with the proposed language.

She said that the Staff would like to have the proposed language be supported and go forward because it gives the Town protection. The Board also has the option of staying with the current language.

Mr. Hodge said that he looked at Concord's and Bow's ordinances. He said that Bow kept the frontage in. Concord was very specific. They need 22' of frontage and to meet all setbacks. After discussing the language with Mr. Jodoin, they came to the conclusion that either Bow's and Concord's ordinances were wrong or Pembroke's ordinance was wrong and that is why they asked for LGC's opinion. LGC said that the language did not qualify as a taking because if someone could not meet current requirements, they could apply for a variance. Because the non-conforming lot is a lot of record, they are not exempt from the zoning requirements.

Ms. Verdile said that an e-mail from Attorney Bernie Law indicated that the popular myth that "the owner of any substandard lot which is smaller than but predates current zoning lot size or frontage requirements is automatically grandfathered for any and all uses allowed in its district. This view is mistaken. The doctrine of nonconforming protects only existing uses, not hypothetical, future uses of a vacant lot. When the term grandfather is applied to a substandard lot that term is being extended beyond its normal meaning." There are a few Supreme Court cases that support the understanding.

Mr. Hodge and Ms. Verdile made clear that they are in favor of the proposed amendment. Selectmen's Rep. Kline asked if Attorney Bernie Law was supporting the proposed amendment as written and Ms. Verdile said that he was supporting the premise of the amendment but not the actual language.

Mr. Verdile said that Town Counsel said that he would consider the language a "taking".

Mr. Hodge said that he sent the public notice with the language for Zoning Amendment #4 to LGC and they had no comments.

Selectmen's Rep. Kline pointed out that LGC is not the Town's insurance firm or Town Counsel and is just another source of opinion.

Chairman Topliff said that it is important to recognize that if the language needs to be changed in the future, the Board can do so.

Chairman Topliff opened the public hearing at 8:19 p.m. on Zoning Amendment #4 which deals with lot of record.

Vice Chairman Seaworth said that it was his understanding that the current language was made at the request of the ZBA.

Mr. Carlucci said that he had not heard anything about the ZBA requesting a change. He asked that the proposed change be read aloud. Member Bourque gave Mr. Carlucci a copy of the language.

Selectmen's Rep. Kline pointed out that the request from ZBA resulted in the current language adopted in 2015. The language that Mr. Carlucci is presently reviewing is the change proposed by the Planning Board.

Mr. Carlucci asked what the intent was. Mr. Hodge said that the change that was voted on in 2015 only was required to meet 2 of the 4 setbacks. He said that he thought that that request was made by Town Counsel who felt that putting that in there would be a taking. Mr. Hodge did not remember the ZBA requesting the change. Mr. Hodge confirmed that it was at his request that the frontage be put back into the requirement.

Mr. Carlucci said that he would be afraid that focusing on 2 setbacks rather than the actual building set reasonably on a property, would be too restrictive. He said that he would not want a house to be on a property line. He pointed out that every case was different. He said that the ZBA makes sure that there are no infringement on neighbor's rights or runoff. He would not want it any more restrictive. The ZBA looks at it as a lot of record so people have a right to build something on the lot of record not right on the property line and not causing damage to someone else's property.

Ms. Verdile will provide the ZBA with the e-mail from Attorney Bernie Law.

Chairman Topliff closed the public hearing at 8:28 pm.

MOTION: Member Bourque moved to approve the amendment as written and forward it to Town meeting. Seconded by Selectmen's Rep. Kline.

VOTE:

K. Cruson – Y	K. Krebs – Y	B. Seaworth – N
A. Topliff – Y	F. Kline – Y	L. Young – Y
R. Bourque - Y		

MOTION TO APPROVE THE AMENDMENT AS WRITTEN AND FORWARD IT TO TOWN MEETING PASSED ON A 6-1 VOTE.

Minutes- January 12, 2016

MOTION: Member Bourque moved to approve the Minutes of Meeting for January 12, 2016 as presented. Seconded by Member Krebs. Approved with one abstention – Member Young.

Miscellaneous

1. Committee Reports-

Tri-Town Ambulance: Member Bourque reported that they have been getting prices for a new ambulance and talking about the budget.

2. Audience Items-

Chairman Topliff said that Mr. Carlucci sent an e-mail with a concern pertaining to mobile homes on any lot. Mr. Hodge said that a mobile home can be placed on any lot in town.

Mr. Carlucci specified that a mobile home was noted as a “manufactured home” in the ordinance and that the alternative would be a pre-site built home similar to a modular. He said that the 2 terms are addressed in the NH Planning and Land Use Regulation and he noted that the Table in §143-19 states “manufactured home parks” but not “manufactured home” therefore he questioned if the subdivision regulations requires manufactured homes to be in a manufactured home park.

Mr. Hodge said no.

Dana said that it seemed that there was a void. Because it is not in the Table of Uses, it could be understood to be allowed in any portion of the town that allows residential dwelling units. Mr. Carlucci asked if the Board would consider including language for manufactured housing in certain areas in the Table of Uses.

Chairman Topliff agreed.

Member Young said that it was his understanding that mobile homes could only be placed in mobile home communities and 3 or more mobile homes would be considered a park.

Mr. Hodge said that that was the case at one time but it was removed.

Chairman Topliff said that the State RSA requires the Towns to provide some portion of the Town for mobile homes.

Mr. Hodge said that manufactured housing must meet building requirements such as setbacks, etc.

Mr. Jodoin said that he received an e-mail from Eversource which states that the rights to Sand Road were never relinquished to Public Service of New Hampshire. The Board

suggested that he check with Fire Chief Harold Paulsen, David Stack, Town Administrator of Bow, and Frank Merrill.

3. Planner Items- 2016 work session items

Ms. Verdile said that the 110 lot subdivision is moving forward. She received a telephone call from a planner who was contracted by the developer to do a community facility study. He would like to know what the Board would be looking for.

The Board said that they would need to identify the types and number of housing units proposed such as single family homes, duplexes, over 55 community, any restrictions, etc.

Vice Chairman Seaworth said that he would like the report to show the current capacity of Pembroke and what would require the Town to upgrade. For example, for every 200 houses the Town would require an extra police car, and with 3 additional police cars, the Safety Center would be inadequate. He thought that that would be great information with the backing data for each of the areas that the Town requests.

After some discussion, the Board would like the study to look at water, sewer, police, fire, public works, ambulance service, library, parks and recreation, manpower, staffing, vehicles (for Dept. of Public Works, police cars, fire trucks, ambulances), structures such as a larger Safety Center, cemeteries and schools, etc.

Ms. Verdile said that they are aware of the Town's phasing requirements. She also said that the Board could deem the project to be a Development of Regional Impact for Allenstown. The Planner also indicated that the developer would like to look at the plans for Pembroke Academy (drainage, etc.)

MOTION: Selectmen's Rep. Kline moved to adjourn the meeting. Seconded Member krebs. Unanimously approved.

The meeting was adjourned at 9:00 p.m.

Respectfully submitted,
Jocelyn Carlucci, Recording Secretary