



Newton Planning Board

Public Meeting Minutes

April 11th, 2023



The Newton Planning Board public meeting was called to order at: 7:06PM

Present were Mr. Moran, Mr. Marchand, Mr. Eddy, Ms. Eddy and Alternate, Mr. Papachristos.

Also Present: James Doggett – PB AA and Ms. Rowden - Circuit Rider .

Via Zoom were Ms. White.

Chairman Moran led the salute to the Flag.

Mr. Moran seated Mr. Papachristos for the absent Ms. Burke.

1. Voluntary Lot Merger

- a. Terex requests a voluntary lot merger of their abutting lots referenced as Tax Map 6, Block 12, Lot 3 and Tax Map 6, Block 13, Lot 2 located at 22 Whittier Street, Newton, NH.*

Ms. Rowden explained to the Board that this application had to be signed by the chair unless the merger would violate the zoning ordinances.

Mr. Marchand **MOVED** to have the chair sign the form, Ms. White seconded the motion.

Mr. Moran asked A.A. Doggett to call the roll.

Ms. White -Aye Mr. Eddy – Aye Mr. Marchand – Aye Ms. Eddy - Aye Mr. Moran - Aye

Mr. Papachristos – Aye

The **VOTE** was **UNANIMOUS**.

2. Public Hearings

- 1. A continuation of Ryan Maguire & Karen Lawes of Newton, NH's request for a public hearing for a Non-Retail Home Based Business (Landscaping) at 75 Whittier Street, Newton NH. The property is referenced as Tax Map 5, Block 4, Lot 5.**

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Mr. Moran asked for Ms. Rowden's input.

Ms. Rowden stated that the Board did not take jurisdiction of this application at the last meeting because of the issue of vehicles and the clause in your home-based business ordinances that does not allow commercial vehicles that weigh over twelve thousand pounds gross vehicle weights to be kept on the property. This required some additional information. I think the planning board got all of the photographs with some of the vehicle information, all of them were under the 12,000 pound limit except for one vehicle and that is the F350.

Mr. Maguire replied, yes so the sticker tag is 14,000 pounds but, I sent another document showing that it actually weighs 9,440 pounds.

Ms. Rowden opined that the clause is commercial vehicles that weigh over 12,000 pounds gross vehicle weight are excluded, so if it is your personal vehicle or if it is used for personal things and some commercial then it is not strictly a commercial vehicle. Do you use your truck only for commercial purposes or do you use it for both commercial and personal reasons?

Mr. Maguire answered, I use really all vehicles for personal and commercial use.

Mr. Moran stated, I looked into this a little bit more, just because of the discussion that we had previously; and I have talked to a few people in the community; I actually drove by your property; I live right across the street basically, not an abutter though, I just want to put that out there my personal opinion is that it is not a negative impact to the community. Specifically, what you are doing, the vehicles that you are using or proposing to use, are in today's nature somewhat light duty compared to a medium duty vehicle. I am just putting that out there. You know you came to us in an effort to do the right thing, to register your home-based business and I am aware that there may be some home-based businesses in your vicinity or proximity that may or may not exceed the current weight limits. Just to make everybody aware so I also spoke to the road agent and previous members of the planning board on that regulation; about where or how the 12,000 gross vehicle weight rating came about; and based on my discussions with people; the current road agent has no concerns. It is not impacting the roads like a UPS truck has a greater weight than that. Or personal base pickup trucks, my own pickup truck has a greater gross vehicle weight than yours, your explanation that you are using your vehicles for both personal use and commercial use I think is a good explanation. In moving forward, I think my recommendation to the planning board and the board of selectman in March next year, when we can change the Zoning to reflect that. We have the Clause that we use, it cannot be a negative detriment or negative impact to the community yes so you know I think that the planning board needs to revise their regulations to maybe expand that to like a commercial weight of 26,000

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GVW, get it to a commercial level where you would need a CDL. The intent or at least my understanding of the intent was intent was to limit the use of a typical triaxle not a one-ton vehicle boom. Does anybody else has any questions?

Ms. Rowden said, not a question just a statement, while recognizing that this clause has caused problems with home-based businesses before today and what the intent versus what people are asking is the reality of the businesses. I do think the planning board can work on it for next year, but for now you have no flexibility in what you can approve or not prove because of this clause. You also do not have a definition for commercial so that was why I asked that question, just for clarity and for the record. So it is clear for everybody, it is on record, if there were to be a problem you have something in writing, you have the documents that were provided to the Town as well, with that I do actually think the application is complete if you want to move forward.

Mr. Marchand stated, for the record's sake, that is what I drive for work. It is just a slightly glorified, a slightly bigger version of a 150. It is not like it is a monstrous, commercial type of truck so it is not like it is going to stand out like a sore thumb in in the neighborhood.

A.A. Doggett commented that he already have a note to change that line in the ordinance if possible and the board may consider going with excluding tri-axle vehicles because that was the original intent 12 years ago. When we did that, we were trying to specifically exclude large dump trucks that would be owned by Eastern Seacoast Concrete or Gibbs Construction. It was never attended to restrict somebody owning a pickup truck. The problem is that technology advanced much faster in the way of suspension systems on vehicles than anybody noted when it came to the Zoning Ordinances.

Mr. Marchand **MOVED** to find the application complete and to take jurisdiction, Mr. Eddy seconded the motion.

Mr. Moran asked A.A. Doggett to call the roll.

Ms. White -Aye Mr. Eddy – Aye Mr. Marchand – Aye Ms. Eddy - Aye Mr. Moran - Aye

Mr. Papachristos – Aye

The **VOTE** was **UNANIMOUS**.

Mr. Moran opened the floor for Public Comment, there was none.

The Board found the following facts concerning the application:

1. That the business plan falls within the scope of the applicable Zoning and Site Plan regulations for a Non-Retail Home Based Business
2. That Justice would be served by approving the application.

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Mr. Marchand **MOVED** to approve the application with the following conditions:

Conditions Precedent:

1. **Obtain a Newton Business Occupancy Permit**

Conditions Ongoing:

1. **No outdoor storage of business-related materials.**
2. **All business shall take place inside the home or off-site.**
3. **Hours of operation shall not detract from the quality of the neighborhood.**

Ms. White seconded the motion.

Mr. Moran asked A.A. Doggett to call the roll.

Ms. White -Aye Mr. Eddy – Aye Mr. Marchand – Aye Ms. Eddy - Aye Mr. Moran - Aye
Mr. Papachristos – Aye The **VOTE** was **UNANIMOUS**.

Mr. Moran closed the public hearing at 7:19PM.

Mr. Moran opened the next Public Hearing at 7:20PM and read:

2. ***Michael & Kathy Hills of Newton, NH requests a public hearing for an Accessory Dwelling Unit at 10 Crossman Circle, Newton NH. The property is referenced as Tax Map 8, Block 2, Lot 12-10.***

Mr. Moran asked for Ms. Rowden's input.

Ms. Rowden stated that the application for an accessory dwelling appears complete with the recommendation conditions be just your standard conditions. It complies with the ordinance.

Mr. Marchand **MOVED** to find the application complete and to take jurisdiction, Ms. White seconded the motion.

Mr. Moran asked A.A. Doggett to call the roll.

Ms. White -Aye Mr. Eddy – Aye Mr. Marchand – Aye Ms. Eddy - Aye Mr. Moran - Aye
Mr. Papachristos – Aye The **VOTE** was **UNANIMOUS**.

Mr. Moran asked Mr. Hills to present his application.

Mr. Hills stated, we want to put in an accessory apartment. This is my second, I was here last year actually with a different design. It is really the same plan except on the opposite side of the house. Originally, we were going to use the garage but after I got my vehicles in after cleaning it, I decided to keep my vehicles in there, so we decided to build it in the back of the house, with the same footprint. The exception is that the location is different. It's under 800 square feet.

Ms. White asked about parking.

Mr. Hills stated it would be in the present driveway.

Mr. Moran opened the floor for Public Comment, there was none.

The Board found the following facts concerning the application:

1. That the plan falls within the scope of the applicable Zoning and Site Plan regulations for Accessory Dwelling Units.
2. That Justice would be served by approving the application.

Mr. Marchand **MOVED** to approve the application with the following conditions:
:

Conditions Precedent:

- 1. Obtain all local and state permits including an occupancy permit.*
- 2. A copy of the approved septic plan be on file.*

Conditions Ongoing:

- 1. The limits of the accessory apartment are as follows:*

SECTION XIII ACCESSORY APARTMENTS (Added March 2001, amended March 2012)

Pursuant to RSA 674:71 , 674:73 the Planning Board is hereby authorized to grant a Conditional Use Permit to allow for accessory apartments in accordance with the restrictions and requirements of this section. To increase housing alternatives while maintaining neighborhood aesthetics and quality, an accessory apartment shall be permitted within all single-family dwelling units. Maximum of one (1) accessory apartment per property.

1. The property owner must occupy one (1) of the two (2) units.

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2. No more than two (2) bedrooms are permitted in the accessory apartment.
3. Not more than four (4) people shall occupy said apartment.
4. Off-street parking sufficient for both units must be provided (space for a minimum of four (4) vehicles).
5. The septic system shall be adequate for both units, per New Hampshire Water Supply and Pollution Control Standards.
6. The accessory apartment must be attached to the primary dwelling unit. Accessory apartments are not permitted in detached accessory structures on the same lot.
7. The accessory apartment shall have convenient and direct access to the primary dwelling unit (a connecting inside door) AND its own separate entrance/exit.
8. Appearance shall remain that of a single-family residence. New entrances for the accessory apartment shall be located on the side or rear of the building.
9. The size of the accessory apartment shall be a maximum of 800 square feet.
10. The primary dwelling unit and the accessory apartment shall share common utilities including well, septic system, heating and electrical service.
11. Design of the accessory apartment shall be such that it would be readily adaptable to conversion into part of the primary dwelling.

2. Meet all Life Safety Codes.

Ms. White seconded the motion.

Mr. Moran asked A.A. Doggett to call the roll.

Ms. White -Aye Mr. Eddy – Aye Mr. Marchand – Aye Ms. Eddy - Aye Mr. Moran - Aye

Mr. Papachristos – Aye

The VOTE was **UNANIMOUS**.

Mr. Moran closed the public hearing at 7:24PM.

Mr. Moran opened the public hearing and read the following:

- 3. A continuation of 125 Development NH Corp of Plaistow, NH's, request for a public hearing for an Amended Site Plan at 3, 5, 7, & 9 Puzzle Lane, Newton NH. The property is referenced as Tax Map 14, Block 1, Lot 27-4.**

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Mr. Moran reminded the Board that this is not the project that they approved at the last meeting, this one is just north of it, on 108 they are already four buildings on this lot, and we are mainly focused on the most north-westerly area.

Mr. Moran asked for Ms. Rowden's input.

Ms. Rowden stated that this application came before the Board, in September of last year, for an amended site plan, as part of that the property owner has stated that they needed to develop an as built plan, which basically shows everything the way it was constructed. During the course of that it was found that there were some irregularities from the site plan. It was not built quite to the original approved plan, so the Board at this point has not accepted jurisdiction. There has been a lot that has been brought forward, they have supplied a storm water drainage plan that was submitted last week, because one of the things that was not constructed with the original plan was some storm water detention basins. There are a few other items that have come up, but that is really one of the largest. They are trying to bring the site into current compliance, while also having a record of this site as it currently exists. I am going to at this point let Tom Lekborg give what they have presented, but there are a few other issues that is just a quick history of the site.

Mr. Lekborg (Northern Constructors, builder for 125 development and agent for the applicant) stated, I hope you have all read the letters from Mr. McDonough, the applicant has asked requests for waiver for the retaining wall and for the trees and he is offered to post the bond for the work to be needed to be done. Most of the work is going to happen in this front pond right here which is actually not associated with the buildings but that is where the water runoff comes through. Then there is some changes on the back of the building 9A B and C following the fire emergency path. We have narrowed it up, we have added grass, we have added some berms in there, and we have changed the drainage to make it work better. We are bringing it forward to the new pond, well, existing pond, but we are making it larger, deeper, it would be the same diameter, but I think that is really about ready. Where it is, everything else, we are ready to post a bond for it, to hold it, so we can get to work and fix everything.

Ms. Rowden opined that she had some bullet points... the drainage plan that was submitted, the Town Engineer has not had a chance to review it, he does have it but he has not had a chance to review. I only got it last Thursday. I have not gone through the drainage report, it is one of the inspections maintenance aspects you need your Town Engineer to review. My concern about what was submitted is that the drainage plan does not seem to match the accuracy of the as built that the surveyor provided. there seemed to be some discrepancies which would certainly impact on the drainage. The thing that I noticed was the parking area over on the west side, I am sorry actually northwest, the one that was added there. I am talking this is where the question is that the topography does not quite match what is on the site. The as built you guys had drawn is significantly more accurate than that. It appears the Town Engineer needs to

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review that. It was something I noticed so I wanted to at least point it out to you to be aware of as an issue or what I am spotting as an issue. The two letters that were submitted from the property owner about the landscaping and the retention wall (that is holding up for what is basically the fire lane at the back of the buildings) the Board wants to hear from the Town Engineer on that. It is in my review letter that I strongly recommend you require a professional engineer to evaluate and stamp the plan. I understand he may be having trouble getting that evaluation, but that does not mean that you actually have to take it down to then reconstruct it before someone might stamp it that is sort of worst-case scenario. I am not saying that you need to require that, but I would at this point recommend you still get an engineer to stamp the plan for structural Integrity, because it is a fire lane, and it is a fairly large wall. Another item is the landscaping bonds, landscaping has been a big discussion on this amended site plan one of the abutters who have actually happens to be here. I do not know if he plans to speak, but this has been an issue that has been ongoing. I think that the Board needs to give some careful evaluation to it, and because so many of you are new, specifically, I think we need to have a dedicated discussion about the landscaping that was supposed to be there, what is there, and what is proposed to be there or not, and I do not think that you have necessarily information for this evening to have a good discussion on that. That would be my recommendation at this point. It might be helpful for the applicant to lay out, similar to what Barry Gier actually did at the last meeting with your last application, you had before of the history of what has occurred. I know there is a little bit in Mr. McDonough's letter. But still, that would be my suggestion because I think it would help get everybody onto the same page to have a thorough discussion on the landscaping aspect specifically. Those are my bullet points.

Mr. Moran asked A.A. Doggett for any input.

A.A. Doggett stated I supplied everybody especially the new members with the last KV Partners opinion letter, the last circuit rider opinion letter, the last listing that we received from the applicant on what the changes were proposed, and the newest plans. I did not give everybody a copy of the landscaping plan. I have that digitally and can print out and give everybody an 11 by 17 of that. Is there anything else that Board members might need in order to make an informed decision?

Mr. Moran asked, I have another question, were you in the process of amending your alteration of terrain permit.

Mr. Lekborg replied I believe it is just in process right now. so I do not think it is been filed. I will have to look because it will just be a renewal of itself.

Mr. Moran stated that it is going to be amended.

Ms. Rowden stated that this will trigger an amendment.

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Mr. Lekborg stated I will have to ask Barry (Gier), he just could not make it tonight. I guess we need to, it is a lot of changes on the back of the building.

Mr. Moran replied, I think my concern for you yes is that I do not from a money standpoint on your side, if we flip this over to Mike Vignale, the Town Engineer, to review he is going to review it and say you spend (I am just going to pick a number) 300 and say it does not match your existing conditions and when this goes up to the state they are going to say it does not match the existing conditions, so before we release Mike to do a review I would talk to Jones and Beach.

Ms. Rowden suggested the Board could authorize your Town Engineer to be in communication with the applicants engineer, to be able to figure out what they need to do to get the drainage plan up to the level it needs to be.

Mr. Marchand agreed that that would be a smart move.

Mr. Moran stated, you sold in the effort to make this go a little bit smoother, reduce your costs, and move this forward. I guess I will leave it at that it is fairly hard for me to review the drainage report, it is lengthy. I mean this is what I do every single day, but I think there is some disconnects of what is actually out there and what is in the report, and I think it would be beneficial to do that because Alpine created an as-built survey that is different than your existing conditions shown here, and I think it would help if they were the same or very similar. I mean the goal of this is to capture what is out there. I understand what you are saying and then Jenn recommended that we speak specific to the landscaping, or do you want to kind of walk through?

Ms. Rowden, my recommendation is have the applicant list out the history of the landscaping as to what was originally approved. Jim can give you the original landscaping plan to then what has changed and what they are proposing now because they are here for an amended site plan. If they want to change something now is the time to ask. That does not mean that the Board has to approve it but now is the time to ask.

Mr. Moran iterated, so you are planning on coming back with exactly what you want to do for the landscaping.

Mr. Lekborg stated well I think we are trying to get to where the landscaping is part of what we are doing right now. I think when I come back, we will discuss the obvious. There is big change in back of the buildings we have narrowed up the road, there is a ton of grass all gone in so, there I mean just look at this whole year's information is referring to the retaining wall on the back of the buildings.

Mr. Marchand commented that there is also the waiver that he is requesting about the planting of trees that were not planted. Stating that they tried to plant the other shrubberies and stuff and they did not take.

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Mr. Lekborg stated we did well, that is what I am saying, but it is not all on that side, the hot side is the back side, the front side is less so. We will itemize what we are doing back there better to give everybody an understanding of what it was and what it will be.

Mr. Moran stated it would be beneficial for the record you know protects you as well as you want you originally proposed and were approved to plant eight trees and now you are proposing to plant seven trees.

Ms. Rowden added, one other thing because it surprised me a little bit that you guys are wanting to get rid of the I am going to say the parking lot that you had added you are just wanting to have that be grassy alone seeded area. that is going to end up being okay you are referring to these parking area to the west.

Mr. Lekborg stated the last question I was about the retaining wall. We cannot even find a building permit on it.

Ms. Rowden commented, that would be my question was a building permit ever pulled.

Mr. Lekborg replied that yes it was inspected, we have an inspection sheets, but we do not have the building permit. Downstairs they do not have them or cannot find any of it. The complete file for A and C is completely missing.

Ms. Rowden continued that she could not explain to the Building Department's record keeping one way or the other. The retaining wall was never on the original site plan. So, in theory, a building permit should have actually never even been issued for it. What happened I do not know I would still recommend the Board have a structural engineer review it. I would wait for your Town Engineer I think he is going to say the same thing, but I do not want to speak for him.

Mr. Lekborg opined I do not think we have an issue having to start commissioner review it is for instructional engineer to stamp an A-Okay on it. That is our issue.

Mr. Moran inserted; I think personally, it is possible, if somebody is comfortable with the design, knowing it is not uncommon for a professional engineer to caveat anything and stamp it as long as you have the caveats. I was not out there, if it was based on a drawing that was constructed per this drawing that was prepared by, I am just going to pick on Jones and Beach because they happen to be an engineer of record and they would cite a detail on D1, this retaining wall if it was built and constructed per that detail it should be okay. I think that is what we are looking for because we as the Planning Board did not review and approve any design, the Town Engineer did not review anything, and it was not on the drawings. I think, at least me personally, not speaking for the entire Board, which would be something, to say yes this was reviewed by somebody so it sheds the liability of that professional engineer from sealing it, but it shows that it was designed by somebody, and you know if it was like Shea concrete.

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Mr. Lekborg interjected that is exactly what it is.

Mr. Moran continued that they provide stamped drawings all the time.

Mr. Lekborg continued, I know that, but I am sorry we just cannot find them. that is, we bought all the material from did everything the LG or Matt's done by them.

Mr. Moran opined that it was his guess is he could call them, and they would provide it. It was only six years ago.

Mr. Lekborg countered with, I know that but that is a no, they retained for three. So, we are looking and there was a design submitted for the building permit that is how we did it

Mr. Moran stated that was not approved by the Planning Board.

Mr. Lekborg replied, pardon me.

Mr. Moran reiterated that that was not approved by the Planning Board.

Mr. Lekborg stated, I understand what you are saying but, it is like there is more problems with the original drawing than there is correct with the drawing. That is where you as we proceeded to construct, we realized that there was a 60-foot difference in elevation problems in the on the back line.

Mr. Moran commented, I guess that is why you are here.

Mr. Lekborg replied that is why we are here, our quick decision was not to have the hill fall down, let us build a retaining wall. It has been there with 60-foot plus in the survey. Behind Jamie's house where we were talking about the pond that is missing remember in the slope, that slope is not at all with the drawing. When I had the original one, if you looked at it I that is our issue that whole back line the hill behind us is much higher than it is in the original drawing, original survey, so I do not know where we are going to go with this.

Mr. Moran stated what I am saying to you is that I have seen busts of like a quarter foot or a foot in a survey that is pretty bad, and I personally, I have been doing this a long time, I have never seen a 60-foot bust.

Mr. Lekborg stated if you think about it, we put a retaining wall there where there is not one required.

Ms. White asked, Tom if or when you and the applicant started doing extra things that were not on the approved plan is there a particular reason you/he never came to the

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Planning Board to ask to change it and to explain why you wanted to change it or did he just feel like that is what he needed to do and did it.

Mr. Lekborg replied I think originally the wall was put in there was an emergency situation we did not want to let the whole backyard of the neighboring house come down. We did not really know what was going to happen. I think we put it in. What we did is we went to the building inspector because he was out obviously, we see him frequently and we said look, we are going to put a wall in but we need a permit and what we need to do. So, we permitted the wall and went ahead and building it but it is probably four feet thick, it is two layers higher than we originally thought we would need to get it to all the work, so it is well three foot blocks I think, so six feet higher than we thought originally. There is discussions about engineer walls, the heights, the permits required, there is three foot of landscaping wall, eight-foot building inspector wall, anything higher an engineered wall. I think that is where we are at this point, so I guess it has been there six years it is not moving. it is not going anywhere it is not little landscape blocks these are the big blocks.

Mr. Moran commented, which actually concerns me more but from a geotechnical stability standpoint and the global stability of the wall. So rewind about six seven years ago whenever it was it was there was a 60-foot bust in the survey and then all of a sudden there was slope stability concerns that we had to build the wall but there was also material that was removed and the natural progress of things is like oh we probably should not dig a hole and that slope is going to fall down.

Mr. Lekborg interjected that is we did not we did not need a hole. we were cutting straight it was a straight cut.

Mr. Moran continued, well okay removing material to expose the slope that would cause a slope stability concern for the requirement of a wall I guess it would have been easier or you know hindsight is 20/20 and I understand that. Maybe not excavate that deep and go straight back, raise the finish for the building a couple of feet so there would not be the need of a wall or get a wall approved and permitted or come back a couple of weeks later and say, hey we ran into an issue, there was a bust in the survey here is our stamped drawings Planning Board, are you okay with it? Do you want your engineer to review it and...

Mr. Lekborg commented, I understand your concerns I understand the process of it but that is what we chose to do at the time wrong or right that is how we did it at the time. I mean we have received occupants for occupancy permits for all the buildings we have gone through this whole thing it is not like that this wall just popped up this week and or six months or eight months ago it has been there, everybody is aware of it .

Mr. Moran added, right, and those are all outside the Planning Board.

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Mr. Lekborg commented, well, no, I understand what you are saying, but we keep coming back in for our focus program. You got everybody to sign off, it keeps going around, the chair signs off on it. What I am saying to you is that there is no surprise that that wall is there, the wall has been there since day one, it went in first and when you buildings after the wall because the wall had to be there. Without it the building footprint would not fit where it is so, I guess I am not trying to argue with you, I am just trying to say that this is what happened. How do we get out of it/ how do we get to the next step, I guess.

Ms. Rowden commented that wall was not known to the Board until last fall / late last summer. It was never on any of the changes of use applications that came before the Board, the Town Engineer had not been out to inspect in several years, I cannot speak for building officials.

Mr. Lekborg interjected; Mike would have seen the wall many times. It has been there. He has been on site, This was constructed probably six and a half seven years ago, I mean as we started the buildings it was approved 2015 .

Ms. Rowden continued that she thinks, moving forward, wait for the town Engineer's review, if he still thinks you should have it stamped or some other mechanism might be recommended. I think you should hear from him. My recommendation is still that you get a stamped letter from an engineer that has reviewed it for structural integrity, but it is the Planning Board's determination in the end whether you are going to require that or not.

Mr. Moran stated I guess we will wait for the Town Engineer's opinion on the waiver request I am not sure if it is a waiver request or
As

Ms. Rowden stated it is more of a condition recommendation and whether you want to approve that or not it is really a completeness issue. Do you need that information to determine if the amended site plan is complete. Kind of like you need the drainage analysis to determine if the amended site plan is complete.

Mr. Moran said, I have a question and you may not be able to answer this, from a liability standpoint, from the Planning Board or the town of Newton. If we waive that request or accept the request to add that condition. and our Town Engineer says we probably should look at that and require a wall where do we stand.

Ms. Rowden replied if I was the council about the liability of the Town, obviously, if an engineer stamps it then they become liable, but if they then say well whoever built it built it incorrectly well then, the applicant becomes liable, but if an engineer has not seen that it was constructed, has no oversight as to how it was designed, and that is the reason you are probably having someone unwilling to stamp is because they cannot verify that it will not cause a problem correct.

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Mr. Moran added I think that is in this request I think it cites or mentions that this is private property.

Ms. Rowden stated this is certainly private property, but I will say this goes against a fire-lane this is not a decorative retaining wall.

Mr. Moran stated it is the line in the request "I formally request, I am formally asking the Board to remove the requirement that an engineer sign off in the retaining wall as the wall has been in place for six years with no issues and it is a private site." I am happy to reach out to our Council for that clarification depending on what Mike Vignale says.

Ms. Rowden stated, just to speed it up you could actually ask your Town Council are we is the town liable if we have something constructed without a licensed engineer review.

Ms. White added, I was just going to ask that if we could get Town Council to give that answer because I would hate to give the blessing of the Planning Board by giving them an you know an out that they do not because we paperwork cannot be found and then if God forbid if something happens and that wall falls down and hurts somebody indirectly that kind of comes back to the Planning Board if we said okay.

Mr. Moran replied, I would agree and that is kind of my concern is that we are now accepting or acknowledging the fact that this may or may not have been designed correctly or there is no paper trail.

Mr. Lekborg countered with, what if we wrote a letter to the fact that we released the town of any responsibility of it.

Mr. Moran replied I guess I would again happenings at a council yes. Okay are there any other comments from the Board.

A.A. Doggett added I was just going to add to the last comment because this is real estate versus a roadway issue. You cannot surrender liability because, if it changes hands that the new person has not agreed to the release. The Board needs to stay far away from that one. if there are documents that cannot be found in the Building Department, they issued permits based on plans and it is a physical permit that you get. It is quite possible the applicant has those permits because most people retain them because you need them for your insurances and all that other things so.

Mr. Lekborg commented that we have also not been able to find them but there is also a history not receiving an actual physical permit in town. There is a lot of that, it has been for the last 10 years I have been building the town.

Mr. Marchand stated I would like to wait and see what legal counsel has to say about all of this and propose exactly what is going on to legal counsel and let him run through the

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gambit of the do's, don'ts, and what ifs; and be able to acquaint us with what we can and what we can and what we should not do.

Mr. Moran added, I am cautious about spending the Town's money to address this issue from a legal standpoint but for us to reach out and seek advice on this.

Ms. Rowden mentioned this is a formal application, this you can charge to your escrow account just like your Town Engineer, I mean obviously within reason.

Mr. Moran added I still think it may be easier to I hear what you are saying, an engineer out there to say yes, it is fine, or, I guess Jones and beach has these has this capability in-house correct they may be able to provide an opinion.

Mr. Lekborg added well they are not Structural Engineers that is my problem.

Mr. Moran replied they could find somebody.

Mr. Lekborg stated that is why I do not have one yet, because we have not been able to find somebody wants to take on the wall. I guess it would be because we were we were chasing a stamp too. Though so you know, like you were saying, you had to write but they did not see it built. It is kind of a gray area when you start writing that as you were saying but short of taking it down that is that is basically where we are at. Let us wait for Town Council for then and then we will wait I will talk to him Barry Gier and then see if we can make this move forward somehow.

Mr. Marchand commented, see if he can get out there and take a look at it.

Mr. Lekborg stated Mike has inspect the walls for us before and that is what I am saying I mean I am not to dig another hole, but you know I mean this is not the only retaining one on the property and they are constructed all the same.

Mr. Moran opined; I think if I go back to Mike's original comment back in October of 2022, his recommendation was that somebody should look at this. My guess is that potentially or that comment came because he had a potential concern and maybe I will email him and ask for clarification of why.

Ms. Rowden reminded the Board he also went out when he and I did a site walk in November. So, he saw it, I mean he did not spend a lengthy evaluation of it.

Mr. Moran replied, yes I will look at the pictures but I think there is like a negative batter on the wall that is causing him to make a comment.

Mr. Marchand commented that was part of my concern because I brought it up when it came after the walk and I looked at the pictures and I saw a few of those stones jutting out a little further than the rest of them and my concern was that they could be as big as

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that and what you are saying through sediment, through the rain, and all of that, with dirt shifting and the weight of that it can move mountains. My concern was the some of those upper barriers, if it is not draining properly which is what we are talking about with the drainage, it could be shifting some of those biggest stones outward.

Mr. Lekborg stated, well this is what you are speaking about Bob is actually they are waste blocks, these are not the fancy blocks that do have the keyways and the tops in them. I mean it has been the same, it has not moved it, there is some they are not perfectly straight because this is as you know how they are made. I think the drainage works perfectly, we still see it running, so it comes out to the pond. It is like I do not have an issue with that, the battering issue on the wall, there is a little bit of that that is the only thing that that sticks out. I think that is what Mike was looking at right because as we get to the end of the wall is it very upright but that is not really holding back.

Mr. Marchand added, yes, like I said it is the optical illusion that you are getting when you are looking at it.

Mr. Lekborg stated, if you looked at it in person it does. I saw the pictures and there it is hard to tell by looking at the picture, it gives you a feeling of something different than what is there, but that is here and over there, we still need to do this.

Mr. Moran inquired, how tall is that wall right now.

Mr. Lekborg stated I believe it is 14 feet in one section it is not the same height all the way it varies.

Mr. Moran inquired further if Shea's wall has grid to hold it back at certain heights.

Mr. Lekborg replied, yes, that is how it is done. It has got a grid, it has got this peg, it has got probably five feet of crushed stone behind, it all the way, top to bottom. It has got drainage pipes at three levels, I believe remember right, it has been a long time since I made it. It has been sitting there like quite a while but yes, I think at the very end I think it is eight feet on the far end, on the most Northwest part and then the far kind of in the middle behind this building.

Mr. Moran added, I guess because I deal with Shea quite often yes if they provided stamp drawings, they have them.

Mr. Lekborg replied I well we will try with them again, but they said they did not so we have requested them already.

Mr. Moran added because I mean outside of Newton Planning Board like...

Mr. Lekborg interrupted stating, they are kind of like the plans to do are kind of generic and that is why we thought like you know what is the what is the big deal of it right.

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Mr. Moran continued, but they do provide stamp drawings that are generic based like this detail this height you know X number of every lift put 15 feet of geogrid after six feet you got to go back 16-18 feet, but based on the soil conditions and so they probably...

Mr. Lekborg interrupted to say, I will chase them I will go down and see them again and see if I can get that carried up on them but that is basically where everything is from so that is we have done multiple walls in the project with them so but all right I guess what do you want to do continue it.

A.A Doggett stated that in the reply from KV partners to the email that I forwarded yesterday, regarding the fact that he would he did not have time because of the holiday weekend to review that I believe he made a comment about his concerns and that was forwarded to all the Planning Board members and Jones and Beach.

Mr. Moran asked are you referring to the Ada and guardrail issues as well.

Ms. Rowden read from the KV Partner's email "wondering if the guard rail or handicap accessibility issues have been resolved, have not been out there to check so there were some guard rails that were missing, and you had placed boulders and some of the handicapped striping.

Mr. Lekborg interrupted to state all the handicap striping is done. it has all been Yeah you mentioned that it has been, we had pictures, which is all complete. All the handicap stuff has been dealt with, that is quite some time ago and the guardrails, yes, we provided pictures some time ago for it has in the guardrail issue. They are coming, we are probably installing them in two months, but for right now the rocks are still there. We did adjust what he wanted, all the rock sizes, which has all been adjusted, taken care of. That was probably like November - December somewhere around there.

Mr. Moran asked if anyone had any comments.

Mr. Roger Hamel (abutter, 17 Spruce Lane) stood to comment stating I live in Sargent woods and for those of you who did not know I was on the planning void for several years prior to this. I have some prepared statements and then may answer questions beyond that if you would like. He read:

I am Roger G Hamel. I live in Sargent Woods that abuts lot 14-1-27-4.

When the Site Plan for this lot was first approved in May of 2015, it included a detailed Landscape Plan. That Landscape Plan was so important to the protection of the interest of the abutters that the Planning Board required that Sheet L-1 be recorded at the Registry of Deeds. To my knowledge this approved Landscape Plan has never been amended in **any way** by **any** action of the Planning Board. An approved

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Landscape Plan cannot be altered based solely on private conversations between the developer and an abutter of an individual Planning Board member.

This plan required many plantings along both the Walnut Farm and Sargent Woods property lines. The developer submitted a bond in the form of a Letter of Credit to insure that the work would be done. Unfortunately, the developer failed to complete the work required in of the Landscape Plan and the Town allowed the Letter of Credit to expire without it being called.

I request that the Planning Board require all of the plantings on the 2015 Site Plan be required in any Amended Site Plan and to establish a firm deadline to complete the work. I further request that the Board require the applicant supply a bond to insure compliance and that the Board calls the bond in a timely manner if the work is not completed by the deadline.

The applicant now calms that the original approved plan that he submitted calls for species of trees that would not grow in this region. I request that if the Board entertains any changes in the Landscape Plan that they require the applicant to supply documentation from a Landscape Architect that the substitute vegetation we provided, at a minimum, the same level of screening in the same areas as was required in the original design.

Also, seeing that the new plan requires substantial regarding just outside the 50-foot undisturbed buffer along the property line with Sargent Woods, I ask that the Planning Board require the Town Engineer periodically inspection and certify the efficacy of the Erosion Control measures until the site is fully stabilized. In the past Sargent Woods has suffered significant silt runoff from this site.

Thank you.
Roger G Hamel
17 Spruce Ln
Newton, NH 03858

Mr. Jamie Fitzpatrick (abutter, Walnut Farm Road) stated so I am on the other side of the development as Roger, so we talked about some of his concerns in Sargent Woods. I will talk about some of the concerns from the Walnut Farm perspective. Some of you that have been on the Board for a while have heard me talk and have seen letters I have sent, a number of letters in over the over this time. I have sent them to the selectman for enforcement; I sent them to the Planning Board asking that you maintain the 2015 plan; and in 2023 it is still not planted as per the plan. The Board has heard comments made that Mr. McDonough cut a deal with me, no such deal was ever cut. One, I am not in a position to cut a deal, what I had said is "can you please plant the trees" and I have said "if the Board okays, it would be better to have evergreens then leaf trees, because in the winter you do not get the screening." We have had that discussion numerous times, nevertheless. the full plantings have not been done. Either I

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am more familiar with the Sargent Woods side and they certainly have not been done on the Sargent Woods side. The plan has been there for a very long time. I have been coming to meetings dealing with this situation since 2008. I have heard not only in my particular area but other areas in this development, repeated statements too... Whether right or wrong this is where we are, we need something done, and I am hearing that yet again today, whether right or wrong, this is where we are on the retaining wall! I want a waiver, well right or wrong here's where we are on the plantings. I want just you guys to change the rules... You will see that there is a number of people not here that have been here very often from Sargent Woods and from Walnut Farms and I can tell you the perception in the community is we are just going to get sold down the road and the Board is going to give whatever is requested, because that is what happens in this town and that should not be the perception, that should not be what happens in the town. There was a plan, there has been sufficient time to fulfill the plan, the plan has not been fulfilled, and now you are being asked, particularly a number of you who are very new to the Board and who do not have this history, are being asked can you just waive it? Is what it is right now, and you know we have done what we can, we have made some plantings and it should be good enough, can you just let it go? To give you just a bit of history, when I bought in, as well as some of the others in the neighborhood, we had a 200-foot setback. It was granted by this Planning Board, well it was the town structure in the Planning Board, it said we are going to hold to that 200. The applicant went to ZBA, they got that adjusted and it ended up being a 90-foot setback. That would be held to but part of the deal ended up being with the Planning Board that there needs to be a tree screen for the betterment of the abutters many of who bought their properties thinking they had a 200 foot setback, they lost that. The applicant has gotten the benefit of the adjustments that were made by the Zoning Board of Adjustment rightfully so, the Zoning Board of Adjustment made the decision, the applicant got his adjustments, and he has been able to use those adjustments to his betterment. The abutters are still waiting for their benefit that was supposed to happen from these plantings, screening, and it has not happened, and I urged the Board, I do not have all the citations that Mr. Hamel had, but I would urge the Board also, there is a plan, at some point in time the Board needs to draw the line and say we need the plan to be committed. Again, if there is going to be any changes to the plan, my recommendation would be that it is better to have coniferous trees that are evergreens than it is to have deciduous trees with the leaves coming off. That said I will settled for anything that matches the plan or provides the same screening as Mr. Hamel has just mentioned the residents, the abutters, should not be the one that take this on the chin. There are commitments made and the Board should not simply waive those because it is convenient or because basically, we have outlasted the Board that had a lot more history with what is been going on. So, I urge the newer members to get with Mr. Doggett has the records of the Planning Board there has been many letters sent there has been letters forwarded, I would share those with all the new members of the Board so they can understand the history the abutters are really looking for the planting/screenings that they have been waiting for a very long time thank you.

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Ms. Rowden stated my recommendation at this point is to continue this because I do not think the application is complete and there are clearly a number of issues that need to be addressed. I will just say as I know I will not be able to be at your next meeting so if you wanted to continue it a month out but that is obviously completely at the Board's pleasure. I will not be at the next meeting on April 25th.

Mr. Marchand **MOVED** to continue the public hearing to May 9th, 2023; Ms. White seconded the motion.

Mr. Moran asked A.A. Doggett to call the roll.

Ms. White -Aye Mr. Eddy – Aye Mr. Marchand – Aye Ms. Eddy - Aye Mr. Moran - Aye
Mr. Papachristos – Aye The **VOTE** was **UNANIMOUS**.

Mr. Moran recessed the public hearing at 8:20PM.

3. **Board Business**

a. Acceptance of minutes of the 3/28/23 meeting

Mr. Marchand **MOVED** to accept the minutes. Mr. Eddy seconded the motion.

A.A. Doggett explained that abstaining was not necessary if a member was not present unless they thought there was something fundamentally wrong with the information contained in the minutes,

Mr. Moran asked A.A. Doggett to call the roll.

Ms. White -Aye Mr. Eddy – Aye Mr. Marchand – Aye Ms. Eddy - Aye Mr. Moran - Aye
Mr. Papachristos – Aye The **VOTE** was **UNANIMOUS**.

b. NPREA Manifest

Mr. Marchand **MOVED** to pay the NPREA Manifest in the amount of **\$724.38**,
Ms. White seconded the motion.

Mr. Moran asked A.A. Doggett to call the roll.

Ms. White -Aye Mr. Eddy – Aye Mr. Marchand – Aye Ms. Eddy - Aye Mr. Moran - Aye
Mr. Papachristos – Aye The **VOTE** was **UNANIMOUS**.

c. Invest NH Grant – Update

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Ms. Rowden updated the Board about the work being paid for by the grant. She also spoke about the NH Housing Academy and asked that people sign up for it. Mr. Eddy and A.A. Doggett will be attending.

d. Age Friendly Community

A.A. Doggett informed the Board about the AARP Age Friendly Communities program and asked for a volunteer from the Planning Board to serve on the steering committee. Ms. Eddy and Ms. White agreed to serve.

The Board determined that, there being no public hearing set for April 25th, they would cancel the meeting scheduled for that night.

3. Adjourn.

Mr. Moran adjourned the meeting at 8:37PM.

Respectfully Submitted,

James L. Doggett, A.A.
Newton Planning Board