

ATKINSON PLANNING BOARD

Atkinson, New Hampshire

Public Hearing/ Workshop Meeting

Wednesday August 19, 2009

Present: Sue Killam, Chairman; Paul DiMaggio, Vice Chairman; Regular Members Michael Fletcher;

Alternate: John Wolters; Loren Albright; Mike Turrell

Selectman Ex-Officio: William Bennett

Ms. Killam called the meeting to order at: 7:39 PM

Correspondence

Incoming

Note from Police Chief Consentino re: Gagnon Site Plan review, Map 16, Lot 50.

Highway Safety Committee Charge, Adopted 7/23/09.

PB Budget Printout dated 7/31/09.

PB Engineering Project printout dated 7/31/09.

State of NH, DOT re: Driveway Permit 06-021-145 extension.

Sumner Kalman dated 8/3/09 re: P.J. Murphy Transportation, Inc. v Town of Atkinson, motion to intervene in matter of Wolters v. Town of Atkinson.

Selectmen Agenda Request by Mr. Joseph Pfeifer re: 61 Summit Drive.

Jonathan Longchamp dated 8/11/09 re: Plan Review, Map 13, lot 15.

Cornerstone Survey, Kevin Hatch dated 8/11/09 re: Map 9, Lot 49 –light fixture locations.

Stantec Engineering dated 8/18/09 re: 23 Main Street Site Plan Review, Map 5, Lot 9.

Stantec Engineering dated 8/11/09 re: Project Technical review estimate for 117 Main Street, Map 13, Lot 15.

Fire Chief Murphy dated 8/19/09 re: Gagnon Site Plan Review, Industrial Way, Map 16, Lot 50.

Stantec Consulting dated 8/19/09 re: 12 Industrial Way Site Plan, Map 16, Lot 50.

Sumner Kalman dated 8/17/09 re: P.J. Murphy Transportation v. Town of Atkinson Assent to Intervene with Wolters v. Town of Atkinson.

Outgoing

Memo to Department Heads for review comments re: Gagnon, 12 Industrial Way.

Eagle Tribune Legal Notice for 8/19/09 meeting.

Approval of minutes- June 17, July 15, 2009 was postponed until the Planning Board Meeting of September 16, 2009.

Public Hearings – Continued from July 15, 2009

Gilles Gagnon continued review of a proposed Commercial Site Plan of a 3,500 sq. ft. Addition to existing building at 12 Industrial Way, Map 16, Lot 50 CI Zone. Taken Under Jurisdiction – 7/15/09

Member John Wolters stepped off the Board.

Chairman Killam requested that Mr. Lavelle take the floor. Mr. Lavelle gave copies of the plans for the proposed site to the Board.

Chairman Killam read a memo from the Fire Chief into the minutes and stated that the Fire Chief had one issue regarding the site: clearance for a 35 foot fire apparatus to maneuver around the building. Mr. Aaron LaChance stated that he was reviewing the matter.

Chairman Killam then stated that she had a memo from the police chief. Mr. Lavelle stated that he also had something for the Board. Chairman Killam requested that she read the list of abutters into the minutes first. Present were: Mr. Gilles Gagnon, PO Box 133, Salem, NH 03079; Mr. Keith and Mrs. Michelle Wolters, 14 Christine Lane, Salem, NH 03079; and consultant for Mr. Gagnon, the Jones Lavelle Associates, Stage Road Junction, Hampstead, NH 03841.

Chairman Killam then requested to review the memo given to the Board by Mr. Lavelle. Vice Chairman Paul DiMaggio stated that it was a memo regarding how much the septic could handle; 42 employees for an office and 32 employees for the warehouse. Mr. Lavelle stated that he quoted the State rules and the pages referenced in the memo. Vice Chairman DiMaggio stated that he did not believe that the building would ever have more than 32 employees. Mr. Lavelle also stated in the memo that if there ever were a major change in the number of employees, the septic issues would have to be reviewed.

Mr. Lavelle then requested to review the memorandum from Rockingham Planning Commission stating that issue number one was also reviewed in the Stantec memo and requested to start with issue number two, Structural Coverage permitted and requesting that the applicant give the proposed building square footage and coverage percentages of the building to the Board. Mr. Lavelle stated that this information was contained in Note No. 9 on the Plans. Mr. Lavelle stated that those were the only revisions to the front sheet, and went on to Sheets 2 and 3. He stated that Sheets 2 and 3 were revised to better show the contour lines on the lot, which were confusing in the earlier versions of the plans and gave the septic loading letter. The information in the septic loading letter was not contained on the plans because Mr. Lavelle was concerned that it would appear that the applicant planned to have the total number of employees allowed in the letter when this was not the case.

Mr. Lavelle then went on to discuss the site walk conducted with Mr. Steve Cummings, and Mr. Aaron LaChance. Mr. Wolters was not able to be there; Chairman Killam was at the site but did not go on the walk. They walked the property and looked at the area where Mr. Wolters had stated storm water was going through a stone wall and running onto his property from the site. Mr. Lavelle stated that until today he did not know the outcome because he is not a drainage designer. He stated that the letter from Mr. LaChance stated that the drainage pond had to be enlarged. Mr. Lavelle stated that the problem could be remedied but he did not have the remedy for the Board at the present meeting. He also stated that Mr. LaChance stated that Mr. Wolters concerns of the previous meeting were valid. He then requested to discuss the memo submitted by Ms. Julie LaBranche of the Rockingham Planning Commission stating that she had also addressed the issue of drainage and had proposed some solutions. Ms. LaBranche stated that the issues addressed in her memo were different than those presented by Mr. LaChance because her memo discussed the volume of water while Mr. LaChance measured the rate of flow of the water. She also stated that there was nothing in the regulations that addresses this. Mr. Lavelle reiterated that Ms. LaBranche's comments regarding drainage could be discussed at the same time with those of Mr. LaChance.

Mr. Lavelle went on to state that he was also asked to change the light on the back of the building which shines into Mr. Wolter's property. He asked both the Fire Chief and the Police Chief what to do and said there were two issues,

one the light is out and two changing the light so that it shines down rather onto Mr. Wolter's property. Mr. Lavelle stated that for security purposes, the applicant would prefer a light but obviously the proper light and asked the Board for suggestions. Chairman Killam stated that a light would be good for security purposes but just illuminating what it needed to. Selectman Bennett stated that it should be changed to illuminate just the parking lot. Mr. Wolters stated that it needed to be lowered and changed so that the light did not bounce off the building. Mr. Lavelle stated that they would get the proper light and place it on sheet two rather than in the details.

Mr. Lavelle stated that other comments by Stantec need to be addressed, too. Chairman Killam asked Mr. LaChance to address the comments by Stantec.

Chairman Killam requested that Mr. LaChance step up to the table and speak into the microphone. Mr. LaChance first mentioned the issues carried over from the previous meeting and stated that they did not need to be addressed at the present, with the exception of comment #7 regarding the fire truck stating that he believed the Fire Chief was requesting Stantec to run the model to see if there was enough clearance. Mr. LaChance stated that Stantec could do it. Chairman Killam also asked if there was an issue with the parking interfering with the amount of turning radius available. Mr. LaChance replied that he thought there was, and that the fire truck could travel over some of the line striping, Chairman Killam objected. Mr. Lavelle stated that he would propose to send Mr. LaChance a copy of the plan with the templates put on so that he would not have to run computer models. Mr. LaChance stated that other issues were bookkeeping so to speak and that he and Mr. Cummings could clear them up. Mr. LaChance stated that with respect to drainage calculations there are still a few discrepancies between the hydro cap model and the drainage calculations shown on the plan.

Mr. LaChance then stated that he would like to discuss the final comment on his memo which had to do with the site walk conducted by him, Mr. Steve Cummings and Mr. Lavelle. Chairman Killam interjected to ask if Mr. LaChance had given a copy of his memo to Mr. Wolters and Mr. LaChance replied that he had. Mr. LaChance stated that they found the area that Mr. Wolters had spoken of, an area on his rear lawn by the shed where some ponding was occurring. Mr. LaChance stated that it was his belief that ponding was an issue in that area before the current development of the site but not to the extent presently. He compared the calculations on the present plans to those on the pre 2005 plans and concluded that the flow going there prior to 2005 was essentially 1.60 cfs while after development in 2005 the flow increased to 5.3 cfs, over tripling the amount of flow going into the wetland area behind Mr. Wolter's house and to summarize, it was probably ponding before but not as much as now, and even small storm events are enough to fill it up and because it is wetlands soil it is not evaporating, therefore Mr. Wolter's comments are probably legitimate and he is seeing some adverse affects from the 2005 development, but the new development will not increase ponding much more than ponding caused by the 2005 development as he stated in Comment 21 of his memo.

Chairman Killam asked how much he discussed with the Engineer. Mr. LaChance stated that he had not had a chance to discuss it much but when Mr. LaChance looked at the parcel, he looked at the site as a whole and did not consider that this one subcatchment was flowing over the stone wall into Mr. Wolter's property and meeting up with the flow from the rest of the site and even though the rest of the site had a decrease in post development flow but this one area which was routed through the abutting parcel had an increase which is why it is necessary to look at an analysis of all drainage point not only the combined analysis and that the issue had to be addressed and could be done through a peak rate of runoff stand point either by infiltration, increasing storage or increasing the size of the detention pond and that regarding Ms. LaBranche's comments regarding storm water volume, the only way to affect storm water volume was through attenuation. Selectman Bennett stated that there was enough room for a larger pond. Mr. LaChance stated that a pond would hold the water and let it out more slowly, which could change the nature of the pond from a detention pond to a wet pond, at least for a longer period. Vice Chairman DiMaggio asked about chambers and asked if that were infiltration and asked if it were accomplished through chambers. Mr. LaChance responded yes. A discussion ensued regarding soil and infiltration. Mr. Bennett stated that it would be creating a big leach bed for storm water. Mr. DiMaggio stated that it could be accomplished. Mr. LaChance agreed and stated again they did not have storm water volume requirements, but Mr. Wolter's objections were legitimate. Mr. Bennett asked if ponding increased the number of mosquitoes.

Mr. Loren Albright asked where Mr. Wolter's property was located in relation to the site. Mr. Lavelle pointed out to

Mr. Albright that there was a slope to a level area and a stone wall and that the water drained through the stone wall into Mr. Wolter's property. Mr. Albright then asked where there was a major stream and Mr. Lavelle pointed out the stream and a large swamp on Norris Lemay's property across Haverhill Road where the water would eventually drain.

Mr. Albright asked if Mr. Lavelle could locate a leach bed. Mr. Lavelle replied that he would have to ask Mr. Cummings and Mr. LaChance, but pointed out a gravel spot by a storage shed as the most likely location.

Mr. Albright asked if it was worse in the spring. Chairman Killam replied that it happened every rain storm. Mr. Albright reiterated that from his own experience the combination of rain and snow melt in the spring would exacerbate the problem.

Mr. LaChance suggested one solution which would be to remove a small earthen berm on Mr. Wolter's property which could be removed to allow the water to flow through downstream which would affect property downstream. Chairman Killam objected stating that she preferred they fix the problem rather than sending it downstream. Chairman Killam then asked about the existing well, and if it could be near the structure Mr. LaChance was describing. It was determined that the septic was out front, right by the street. Chairman DiMaggio asked about the outdoor storage area and Mr. Lavelle stated that there were no plans to use it, and Vice Chairman DiMaggio objected stating that it could be used and is legitimate by Town regulations and therefore the screening proposed earlier should be put in the plans and moved up. Mr. Lavelle responded that the storage was not going to be moved. Mr. DiMaggio stated that something should be done about the screening. A discussion ensued about the fir trees screening the property, whether they were dead or alive and if they were adequate as a screen. Chairman Killam stated that some were in good condition, but some were dead. Mr. Lavelle stated that if you looked at the plans, you could see which were dead and which were still existing. Vice Chairman DiMaggio stated that the screening should be definitely in. Chairman Killam suggested something that would grow faster. Mr. Albright suggested Hemlocks; Selectman Bennett stated that they do not do well. Vice Chairman DiMaggio asked if the soil were moist and Selectman Bennett stated that it was very rocky.

Ms. LaBranche requested to address the board regarding height requirements and ratios and asked if the ratio should be according to the total lot area or buildable area. Selectman Bennett stated that it should be buildable area. Ms. LaBranche stated that she was still unsure what would be included in buildable area, if it should be by right or if it could include variances. Chairman Killam stated that buildable area would fall into what is inside the dash lines. Mr. Lavelle stated that was not the way they had always interpreted it and that they usually included everything that would not be wetlands. He also stated that he looked at it and the building was at 18% of the buildable area. He also looked at other industrial structures in the area and buildable area was calculated by eliminating wetlands. He stated that he interpreted it as exactly that, and if the Board looked at Note One, the Board could see that was how it was calculated and the buildable area was about 900 sq. ft. less than the total lot size which is the size of the wetlands. If it is to be interpreted as the size of the setbacks, the existing building is larger than the 25% allowed and asked how the applicant could get a variance for the wetland how it would be interpreted because a variance for the wetland would only be a variance for the building. Vice Chairman DiMaggio stated that Ms. LaChance had pointed out that buildable area was not interpreted in the Town regulations and that Mr. Lavelle had obviously done research on the subject. Vice Chairman DiMaggio further stated that buildable area used to be in the Town regulations and asked when it was taken out. Mr. Lavelle stated that it was probably removed when the cluster regulations were added. Vice Chairman DiMaggio stated that historically, the Town had not taken out buffer areas, but rights of way and soils were not. He stated that Ms. LaBranche should research when and what had been taken out of the regulations regarding buildable area to get a definition, that in the past the setbacks were considered buildable area, but the setbacks were not. Ms. LaBranche replied that this was not typically what she saw in other Towns and what Vice Chairman DiMaggio proposed was a hybrid of what she typically saw. Vice Chairman DiMaggio suggested that the Town come up with a definition of buildable area and the definition would be whatever it takes to support renewed water supply. Ms. LaBranche stated that the term "buildable area" should be revisited because by Town Regulations, it should not include setbacks and buffers. Vice Chairman DiMaggio stated that that was not the intent of the regulations. Ms. LaBranche stated that the regulations stated that "no building should be in the setback", and Vice Chairman DiMaggio replied buildings should not be in the setback but it should not be considered for soils. Chairman Killam stated that that is the purpose of the 25%. Ms. LaBranche then stated that just for clarification the variance was just for additions to existing buildings and felt that this should be revisited. Member Turell stated that the only thing he could find regarding buildable areas was 600:6 and quoted the regulation. Chairman Killam stated that 600:6 was in cluster

development, Vice Chairman DiMaggio agreed. Chairman Killam stated that the Board needed to work on the subject of buildable area. Ms. LaBranche stated that she had one other comment, regarding drainage calculations and the difference between calculating flow and volume. She stated that under Section 310, regarding impact to property. Ms. LaBranche stated that 5.3 cubic feet per second did not mean as much as a volume calculation, that volumes are different for 2, 10 and 25 year storms. Ms. LaBranche stated that she had one other comment regarding adverse impacts, that the applicant gains a benefit by discharging the water to another person's property and that was prohibited under Section 310.

Chairman Killam asked if everyone from the Board was finished and requested Mr. Keith Wolter's take the floor. Mr. Wolter's first stated that he was told what time the appointment would be, requested that the appointment be later, and was told by Tim that that was the only time available.

Mr. Wolters then stated that he wished to address the issue of drainage, stating that the water goes into a small wetland then goes over a small knoll into another area that is much bigger area about 100 feet from the area that Mr. Cummings and Mr. LaChance observe, which was not previously wetland and fills up very quickly – there's a lot of water there. Chairman Killam asked if Mr. Wolters needed Mr. LaChance to go back out there. Mr. Lavelle stated that they followed the water to the other area when they did the site walk. Chairman Killam emphasized that they were aware of both areas. Mr. Wolters said okay. He then brought up the light, and asked it was not an issue as long as it pointed down and was only 8-10 feet above the ground. The next issue Mr. Wolters mentioned was the landscape screening and stated that the reason the trees died was because they stuck the trees in rocky soil without improving the soil and a better berm with real trees would be there advantage. Vice Chairman DiMaggio stated that it was the responsibility of the site owner to keep them growing and that all the Board needed was a complaint. Mr. Wolters stated that the line of trees now there was too small, only about 30-40 feet and did not screen the whole area. Chairman Killam stated that the trees were not planted by the plan and that the whole back area had to be reworked. Selectman Bennett stated that the trees still there had to be moved. Vice Chairman DiMaggio stated there were only about 6 trees there in the 60 foot property line and it was not much of a screen. Vice Chairman DiMaggio stated that going back to Ms. LaBranche's comments on buildable area and reading the section in the Code, it does not only apply just to soils but also includes visual appearance and that the regulation had to be revisited and a definition was needed for footnote 5 in the chart. Selectman Bennett suggested that it follow a logical basis that would include the setbacks. Chairman Killam stated that they were discussing two different things that the purpose of the regulation was to define infiltration and it could infiltrate in a buffer and then there is the question of visual area as regards to setbacks. Selectman Bennett stated that another term might be better and Chairman Killam agreed.

Chairman Killam stated that there was nothing more to discuss at the present meeting. Mr. Lavelle requested a continuance to address the drainage issues and stated that the other issues regarding lights, etc. were already being addressed.

Chairman Killam asked for a motion to continue review of the application to the next Planning Board meeting, Member Mike Turell moved to continue review of the application, the motion was seconded by Vice Chairman DiMaggio, Chairman Killam asked for more discussion, there was none and the Board voted unanimously to continue review of the application to the next Planning Board Meeting of September 16, 2009.

Member John Wolters returned to the Board. Mr. DiMaggio left the meeting.

Chairman Killam then announced the second hearing:

TFMoran Inc. for Kevin Barden submission of an Application for Consideration and Approval of a proposed Change of Use Non-Residential Site Plan from an existing duplex to a 60 seat 'Tea Room/Coffee Shop' with associated utilities and parking. Property located at 6 Main Street, Map 5, Lot 47, C Zone, owned by Bank of New York.

Chairman Killam asked if the applicant had anyone at the meeting to represent him. The applicant replied no. Chairman Killam then reviewed what the Planning Board had at present, no new plans were submitted, and the Board engineer and Rockingham Planning Commission had not had a chance to review plans, the matter was not taken under jurisdiction at the July 16, 2009 meeting and asked if the applicant would like to continue. The applicant requested to

continue to the next meeting of September 16, 2009 and stated that he thought that plans had been prepared. Mr. LaChance stated that he had received an email from TFMoran, Inc. stating that the plans would be ready on Monday. Chairman Killam stated that would be in time for the September 16, 2009 meeting of the planning board.

Chairman Killam then asked for a motion to continue at Mr. Barden's request. Member Turell made a motion to continue, seconded by Mr. John Wolters, Chairman Killam asked if there were more discussion, there was none and the Board voted unanimously to continue the application to the next meeting of the Board.

Chairman Killam then moved to new applications.

New Applications

MJK Realty, LLC submission of an Application for Consideration and Approval of a proposed office building on property located at 121 Main Street, Map 13, Lot 14, TCZone.

Chairman Killam then read the abutters list. Abutters present, Mr. Hart for MJK Realty, Winslow Drive Realty Group, consultants Steven E. Cummings, PE, and James Lavelle Associates.

Chairman Killam then reviewed the status of the application for the Board. The review fees for Stantec Engineering did not arrive until today so there has been no opportunity for Stantec to review the application and asked the Board to take into consideration how far the Board wished to proceed. Member Mike Fletcher recommended that the Board wait for the Engineer to review. Chairman Killam stated that there was a memo from Ms. LaBranche of Rockingham Planning Commission regarding the application which was passed out to the Board. Tim just passed the Letter of Intent to the Board for review, which was not included with the application. Chairman Killam read the letter into the minutes. Chairman Killam again asked again how far the applicant would like to continue. Mr. Lavelle replied that he would like to quickly review the application for the Board without getting into the plans. Chairman Killam then stated that in that case the Board could only consider whether or not to take the application under consideration.

Mr. Lavelle proceeded to review the application for the Board. He stated that it was a 2.35 acre piece of property on the corner of Pages Lane and Main Street. The applicant proposes to build an office building which will house Mr. Hart's businesses, Landmark Benefits and various other things. The building will be 6,000 square feet and will be 1.5 to two stories and look like a cape. It will look like a residence. There will be parking in the front and in the rear with the entrance in the rear. The applicant proposes to have an entrance on Main Street and already has a curb and also a driveway entrance going to Pages Lane. Mr. Lavelle showed the Board drawings of the building from Hampstead Consultants. He stated the septic system would be in the front area close to Main Street, a little to the right; it is a pump type system. The drainage goes to a retention pond and is let out into the existing wetlands. Mr. LaChance and Ms. LaBranche are invited to look at the drainage. The proposed application is a small building compared to other prior. There will be a construction entrance on Pages Lane. He does not have much more to review at this time. There has been no review by the Chief of Police or the Fire Department. The septic system has been approved at the State level.

Mr. Lavelle then asked for questions. Chairman Killam requested Julie LaBranche to speak. Ms. LaBranche stated that she had reviewed the statement of intent which seems to satisfy the requirements of the section except it does not state the hours of operation and had a few questions, first how many people would be occupying the building, if he has an estimate of that. She stated that the sixth bullet on the plan stated the number of parking spaces but there was no way of knowing if it corresponded to the number of people who would be occupying the building. She also addressed the issue of the septic system which was not on the plan, but agreed that Mr. Lavelle had stated that it was approved at the State level. Mr. Lavelle stated that the septic design is permitted but as far as an alteration of terrain, the applicant does not have an alteration of terrain permit and would have to defer to Mr. Cummings if they were disturbing more than 100,000 square feet or not. Ms. LaBranche replied that Mr. Lavelle had stated that the property was 2.35 acres and it was difficult for her to figure the area. Mr. Lavelle stated that he would provide the area. Ms. LaBranche stated that the back of the lot was not on the plan, and then said it was and asked about the stone wall. Mr. Lavelle pointed them out on the map. Ms. LaBranche then asked about landscaping requirements including buffering and screening. It appeared to her that they would be retaining approximately 10 feet of buffer in the front which did not meet landscaping

requirements and there was an area on the right front where there is no landscaping and vegetation where the construction entrance was shown and did not meet the buffering and landscaping requirements. Mr. Lavelle asked Ms. LaBranche to show him on the plan. Mr. Lavelle stated that the construction entrance was going to be a construction entrance. Ms. LaBranche stated that there was 10 feet of landscaping in the other area and 15 feet was required. Mr. Lavelle said that area was open field and he would the plans again. Ms. LaBranche asked if any signage was proposed and stated that if there were it would have to meet Section 470. Mr. Lavelle stated that signage was proposed and it would be added to the plan.

Chairman Killam stated that Mr. Longchamp wished to raise a zone question. There are setback requirements from neighboring zones that specifically do not allow a driveway and the applicant would have to check if the driveway on Pages Lane was allowed. The Town plan takes the center lane of Pages Lane as the demarcation for the Town Center Zone and requirements state that development must be kept 100 feet from that making the driveway a problem, because the regulation basically says that there is no traffic in that setback. Mr. Lavelle stated that the driveway was 15 feet from the center line. Chairman Killam stated that Ms. LaBranche could look at the next page. Selectman Bennett remarked that the small sets did not have all the pages. Ms. LaBranche read Section 6100 regarding screening and buffering stating that the requirement was 100 feet for the use of a residential district and asked Chairman Killam if it meant any component of the use. Chairman Killam if it were 6100:5 parking, traffic circulation and Ms. LaBranche stated that she was looking at the older version Section 690 and in the new version section 1:b. Chairman Killam stated that she should look at section 6100:5 which stated 100 feet for signs and other things. Essential services would be considered for Planning Board approval. Mr. Albright pointed out that the intersection was at a low point and people going downhill picked up speed and there could be a problem with anyone turning left. Chairman Killam stated that removing the driveway would solve a lot of issues. When the Board discussed the site a year ago speed limits was one issue that was discussed and the Department of Transportation would not consider changing the speed limits. Mr. Lavelle stated that the 35 mile per hour speed limit sign was practically in the Town Center and does not give people time to stop.

Chairman Killam requested that the Board end discussion and take a vote to decide if it should take the application under consideration and if it has jurisdiction.

Ms. LaBranche pointed out to the Board that only the second driveway on Pages Lane was within 100 feet, everything else, the signs corner of the building were outside of the 100 foot buffer. A quick look seemed to prove that it would be possible to have only one entrance on Main Street and retain the area as circulation by moving the location of the building on the lot. It might interfere with the drainage plan but that could be changed, too. Chairman Killam stated that waivers need to be justified by the Planning Board similarly as if they were a variance. Selectman Bennett asked if there would be an advantage to anyone for the Board to take it under jurisdiction at the present. Selectman Bennett then asked about handicapped spots, stating that it looked that the handicapped parking lots were at a lower elevation than the building. Mr. Lavelle pointed out that they were next to the ramp. Chairman Killam said that they were going into too much detail. Ms. LaBranche commented that if waivers are not accepted for the setback, then there would have to be a lot more work on the site.

Chairman requested a motion to continue without jurisdiction. Selectman William Bennett made the motion to continue the discussion without jurisdiction until the Planning Board meeting, Member John Wolters seconded the Motion and the Board voted unanimously to continue the discussion until the September 16, 2009 meeting.

Chairman Killam opened the next new matter before the Board.

S.E.C. & Associates for 23 Main St. Realty Trust submission of an Application for an Amended Site Plan for Consideration and Approval of a proposed Driveway/Parking improvement on property located at 23 Main Street, Map 5, Lot 9, C Zone.

Chairman Killam read the list of abutters into the minutes. Present were the Town of Atkinson and SEC Associates.

Chairman Killam handed out a Stantec review memo and a memo from Ms. LaBranche regarding the application. Mr. Charles Zilch of SEC Associates represented the applicant. Mr. Zilch reviewed the plan for the Board. The unlined gravel parking area at the site is the subject of the application. Mr. Zilch stated that over the years, the State of New

Hampshire had regraded and changed the road which has caused a substantial incline from the parking area onto the roadway making it difficult to exit the driveway during icy conditions. The road pavement is sloped directly towards the building which will cause structural issues for the building. The other issue addressed is a large hickory tree which causes safety concerns as well. Selectman Bennett asked where the site was located in relation to the Dive Shop. Member Turell asked where the road cut for the driveway on the map. Mr. Zilch pointed it out for him. Mr. Zilch then requested to review what the applicant proposed. Chairman Killam asked what the use of the building was. Mr. Zilch replied that there were three apartments and a small professional office space which had been used as an accountant office but was currently empty. The applicant did not intend to change the use. As far as the improvements, the applicant wants to regrade the entrance starting with the saw cut on Rte 121, blend the slope back to the existing porch making it a 7% slope all the way across the parking lot to the proposed five spaces in back of the porch which would be a 2% slope. The apron of the parking area is currently a 13% slope. The applicant also proposed to regrade the parking area and line the edge of the parking area with curbing and pointed out the curbing on the plan stating that water would drain to a collection point and released on the property. Selectman Bennett asked what kind of curbing it would be. Mr. Zilch responded that it would be bituminous concrete. Mr. Zilch further stated that in addition, in order to accommodate parking needs, the applicant was going to add additional parking, at present the parking was mixed gravel and paved, but additional parking would be added to the South so that all parking would be on pavement and there would be enough turn around room. There would be two spaces for each apartment and the apartments were efficiency, one bedrooms'. The business would operate from 10 to 5 when the residents of the building were gone, so additional parking for the business would not be a problem. Selectman Bennett asked if the operation hours were included in the plan and Mr. Zilch replied that they were included in note number 13. He stated again that the pavement would be striped, delineating the eight spaces and the handicapped spaces and of course remove the hickory tree to increase sight distance. He stated that it would be an improvement to the parking area, address safety issues, organize parking and correct drainage.. Mr. Zilch asked if there were any issues. Chairman Killam asked Ms. LaBranche to take the floor.

Ms. LaBranche stated that she had a comment no. 1 regarding a waiver regarding buffer requirements on the right property boundary and since it was Town owned property that the Town would consider it desirable to place a fence there to increase buffering. Mr. Zilch stated that the abutting property was under the control of the conservation commission but he was not aware of a conservation easement. Ms. LaBranche asked for a copy of a DOT driveway permit. Mr. Zilch stated that he had talked to DOT, Mr. Bob Callen and Mr. Callen stated that he was fine with the concept and that once the Board approved the plan he would okay it.

Chairman Killam asked Mr. LaChance had any comments. Mr. LaChance referred to his memo and stated that most of his comments were addressed. He then reviewed his comments for the Board.

Comment One had been addressed.

Comment Two regarding the swale the grade needed to be discussed as it was fairly steep;

Comment Three concerns the buffer and that a waiver would be needed if there were no buffer;

Comment Four concerns the DOT driveway approval and that had been addressed;

Comment Five concerned clarifying the wetland boundaries. Mr. Zilch requested to speak on the wetland boundaries and stated that it had been delineated in 1998 and was easily observable, that it was far from the proposed improvements and did not think it was an issue.

Comment Six, Charlie had added a note showing the existing gravel surface outside of the pavement area are to be loamed and seeded and added to the plan;

Comment Seven, limits of the pavement removal beyond 121 be shown

Comment Eight is not an issue; Mr. LaChance did not notice that the plan showed the bituminous curb along the sidewalk.

Comment Nine is a discrepancy in one of the notes and has been addressed;

Comment Ten requested that the detail on the plan be revised regarding rip rap; and

Comment Eleven referring to the drainage, he requested that the drainage be designed for a 25 year storm event and the applicant had revised the calculations accordingly.

Mr. Turell moved to take the plan under jurisdiction, Loren Albright seconded the Motion, with four members in favor and one Member Michael Fletcher opposed.

Chairman Killam then recommended to the Board that it take a close look at what is on the plan currently permitted by the Town because it is a mixed use building that was before the ZBA sometime last year and fell flat. The Board needs to be sure that it does not approve something that has not been previously approved.

Mr. Zilch responded that he could add a note stating that the application was solely for improving the parking area.

Chairman Killam asked the Board for comments. Mr. Wolters stated that he was uncomfortable with the width of the driveway, 50 feet to the highway. Chairman Killam stated that the width of the driveway onto the highway was up to the State. Mr. Zilch stated that once the traffic was striped, only about 20-30 feet would be used.

The contractor representing Mr. Pignatiello then spoke stating the ZBA application was rescinded. The application was a change of use from mixed use to all residential and at that point the ZBA had an issue with building permits issued in the early '80s so the owner decided to rescind the application. Chairman Killam stated that she is concerned that the use is not permitted and that has to be determined, and even though this is an improvement and a parking plan, she wants to make sure that the use is permitted before she puts her signature on it. Mr. Zilch asked if it were a language issue and if he should strike use from the plan. Chairman Killam stated that the issue is if the use was ever permitted by the Town. Mr. Zilch responded that the septic system was approved. Chairman Killam reiterated that the issue of use would still have to be addressed. Chairman Killam stated that she had told Mr. Zilch to look at the file so that he would be aware of the issues and that she wanted to take a longer look at it.

Julie LaBranche asked if there was an earlier site plan change that had not been heard and if the application was withdrawn or rescinded. Withdrawn means that the applicant ceased to take the application forward. Rescinded means that the Zoning Board would have issued a permit and taken it back. Ms. LaBranche asked if the Building Inspector had ever been to the building. Mr. Zilch replied that there had been a series of improvements to the building over the years. Chairman Killam stated that she did not see improvements in the file that added up to three apartments. Mr. Zilch stated that there had been improvements over the years and that the septic system plan clearly shows what is currently in the building. Mr. Zilch stated that at present the applicant was requesting only to improve the parking lot and suggested that he would remove the use and make improvements to the parking lot the only issue.

Ms. LaBranche agreed with the applicant stating that over the years improvements had been made and brought to the Board. She stated that any application should state that the only issue brought to the Board was the improvement to the parking lot, which would not make the Planning Board responsible for prior changes in use. Member John Wolters pointed out that the parking lot plan was based on three residents and an office and if the Board approved, it would imply approval of use. Chairman Killam stated that the Board could do it as Ms. LaBranche suggested and asked the Board for other suggestions. Selectman Bennett stated that he would require the applicant to put a fence between the property and the property owned by the Town that it should be at least 8 feet in order not to prejudice future use. Mr. Zilch stated that he is not proposing parking lot lights and that the only lights on the property were those typical for a residential home. The Board then discussed a fence and decided that it should be at least 60 feet long. Mr. Zilch responded that the applicant would still require a waiver for the buffer and is willing to provide a fence. Chairman Killam asked if there were a written request for a waiver. Mr. Zilch stated that the waiver was submitted and asked if Ms. Killam needed an extra copy. Chairman Killam read the request for waiver into the minutes. Selectman Bennett asked about the comment stating that the land owned by the Town would remain undeveloped. Mr. Zilch stated that he would remove that comment and add a 6 foot high sixty foot long fence in lieu of screening. Selectman Bennett stated that it should be a heavy duty fence maintained in good condition at all times. Selectman Bennett suggested that the comment state that the fence from the front lot line to the stone wall eliminating the need to worry about a few feet.

Selectman Bennett moved to grant the waiver, seconded by Member Mike Turrell with four members in favor and one, Mike Fletcher, opposed. Mr. Fletcher declined to comment on why he was opposed.

Chairman Killam stated that the Board could construct a conditional approval with the assistance of Ms. LaBranche. Chairman Killam stated that the method that Ms. LaBranche described offers adequate protection. Ms. LaBranche agreed to write a condition. Chairman Killam asked for someone to make the motion with the assistance of Ms. LaBranche. Ms. LaBranche read the proposed motion, this approval is conditioned upon determination of the building inspector that the existing uses, being three residential units and one commercial unit are legally permitted and meet all zoning requirements and regulations of the Town. Mr. Wolters asked if conditioned upon was adequate. Chairman Killam stated that the Board almost always has conditions, that she looks at everything and then signs the plan and it is procedural.

Chairman Killam read the motion stating that approval is conditioned upon determination of the building inspector that the existing uses, being three residential units and one commercial unit are legally permitted and meet all zoning requirements and regulations of the Town. Member John Wolters made the motion and Selectman Bennett seconded the motion. Chairman Killam asked if there were discussion beyond the motion. It was suggested that a time constraint be put on it. Mr. Zilch stated that Mr. Pignatelli would like to have the lot paved before winter. Chairman Killam asked if the motion should be changed to add a date. The question was raised regarding time for the building inspector to approve and length of time for the job. Chairman Killam asked if the motion should be changed to state that it should be determined by September 16, 2009. The motioner and seconder agreed to the change, and the Board unanimously approved the motion with the change. Mr. Zilch asked if he had conditional approval and Chairman Killam stated that he did. Mr. Zilch thanked the Board.

Chairman Killam stated that it was 10:10 and asked if there were anything else anyone wanted to talk about. Ms. LaBranche stated that she wished to discuss change of use, where a nonconforming structure had a change of use. Chairman Killam stated that she looked at the matter and the application involved was going from a less conforming use to a more conforming use, that is from residential use in a commercial zone to a commercial use in a commercial zone. Also, the proposed additions to the building were outside the 100 foot setback for the wetlands. Ms. LaBranche stated that the change of use issues needed to be clarified for future applicants. Chairman Killam stated that the issue of commercial use abutting residential use also needed to be clarified and wanted to know how it was handled by other Towns.

Chairman Killam asked if there was any other issues and stated that the Board needed to work on these issues at a future meeting.

Chairman Killam also stated that she did not take comments from the abutters of the MJK Realty application at 117 Main Street because the matter was not taken under jurisdiction. Selectman Bennett stated that the abutters comments would have given the applicant more of an idea of acceptance or rejection.

Chairman Killam then asked for a motion to adjourn. Member Mike Fletcher made the motion to adjourn seconded by Mr. Mike Turell and the Board voted unanimously to adjourn the meeting.

Prepared from tape and DVD. Respectfully submitted

Karen Wemmelmann

APPROVED _____ 10/7/09 _____