



Town of Seabrook Planning Board Minutes

Tuesday, March 20, 2012
NOT OFFICIAL UNTIL APPROVED

Members Present: Jason Janvrin Chair, pro tem; Robert Fowler; Dennis Sweeney; Aboul Khan, Ex-Officio; Roger Frazee, Albert (Max) Abramson; Michael Lowry, Alternate: Francis Chase, Alternate; Paula Wood, Alternate Tom Morgan, Town Planner; Barbara Kravitz, Secretary; Paul Garand, Code Enforcement Officer;

Members Absent; Paul Himmer, Alternate; Alternate; Donald Hawkins, Chair;

Janvrin opened the meeting at 6:35PM.

MINUTES OF FEBRUARY 21, 2012, AND MARCH, 6, 2012;

Janvrin announced that he had been appointed to serve as Chair pro tem for this meeting. He asked if the Board had seen the minutes of February 21, 2012 and March 6, 2012... Kravitz noted that the February 21, 2012 Minutes had previously been distributed; Janvrin had seen them.

MOTION:	Khan	to table the Minutes of February 21, 2012 and March 6, 2012 to April 3, 2012.
SECOND:	chase	Approved: Unanimous

Janvrin appointed Chase as the voting Alternate for this meeting.

SECURITY REDUCTONS or EXTENSIONS

there being none.

CORRESPONDENCE AND ANNOUNCEMENTS

Morgan called attention to the opinion of Planning Board Counsel concerning the situation after the March 13, 2012 election in which four members of the Budget Committee could potentially sit on the Planning Board. Counsel advised that only two persons who are members of the Budget Committee could also be members on the Planning Board. Morgan said that the Board should check the member status because Counsel also advised that if more than two members sit on both the Planning Board and the Budget Committee it would cause problems in decision-making. Janvrin understood that the two persons who were elected to the Planning Board on March 13 had resigned from the Budget Committee, and asked if that were correct. Morgan confirmed this. Janvrin said the Board could then proceed.

WARRANT ARTICLE RESULTS -UPDATE

Janvrin understood that all of the Planning Board Warrants had been passed by the voters, and asked Morgan for the update. Morgan agreed and said that zoning ordinance would be revised accordingly and made available on the Planning Board Website. Janvrin said copies would be made available to the Board Members. Wood asked what the procedure would be for the new Smithtown Village zones. Morgan said this zoning is the rule for property in those zones. Janvrin said that the Board would be asked to review and adopt the related new siteplan regulations, and a new zoning map would be forthcoming as well. Chase understood that once the new siteplan regulations had been adopted the Board would be waiting for an application i.e. nothing will happen until an applicant comes to the Planning Board. Wood was looking for the next step which is the site plan regulations. Morgan said if things go as planned, the regulations would be ready before that application arrives.



Town of Seabrook Planning Board Minutes

Tuesday, March 20, 2012
NOT OFFICIAL UNTIL APPROVED

PUBLIC HEARINGS

Hawkins opened the Public Hearings at 6:45 PM.

NEW CASE

Case #2012-04E – Proposal by William F. Simmons and 11 Railroad Avenue Realty Trust to convert part of a 5,740 square foot commercial/industrial building into office/retail use. The property is located at 11 Railroad Avenue, Tax Map 8, Lot 107.

Attending: William Simmons;

Appearing for the Applicant: Attorney Mary Ganz, Ganz Law;

Khan recused himself for this case because he is an abutter. Janvrin explained that he could not appoint an alternate for this case because Khan is the Selectmen's appointee.

Ganz said that Simmons runs a plumbing and heating business on Railroad Avenue, and also lives on the property. In 2001 Simmons obtained site plan approval from the Planning Board and in 2007 he was granted mixed-use status by the Zoning Board of Adjustment so he could live on the premises. For a time there were tenants including a day-care center; there are five electric and gas meters. When the tenants left and business was good, he expanded his business into the space. Now that the economy is down he would like to rent out space. Garand said coming to the Planning Board for permission would be the next step. They met with Morgan and thought the paperwork was in order. Janvrin asked for Garand's comments. Garand wanted to be sure that the Planning Board looked at the hours of operation and the dumpster hours. Morgan did not see any issues. Janvrin understood that Simmons previously had a use for the space, but now wants to rent it to others. Ganz said that previously the plumbing business had expanded. Janvrin asked for comments or questions.

Chase asked if the dumpster would stay where it was. Garand said maybe there would be a sign, but otherwise nothing would change. Janvrin asked if sign changes would go through the Building Department. Garand said it would, and would have to meet the commercial zoning requirements. Janvrin asked if there had ever been an issue with parking. Garand commented that the day care center was no longer on the site. Janvrin said the lighting would stay the same. This was just a different use of the space. Garand agreed. Wood asked if there were three offices now and it expanded to five, would that increase the parking need. She thought the parking area was pretty small out front. Simmons showed where there were eight parking spaces designated for the front units. The Adult Day care had been in 1400 square feet at the front of the building; the front parking space closest to the driveway side is for handicap. Wood asked how the space would be broken down. Simmons said currently there are two 700 square-foot spaces. He had created a doorway so that space could be shared, because the state required 1400 square feet for the day care. He did not know if it would be one or two tenant in that space.

Wood asked if he would break it down into five offices. Simmons said he had brought the offices into the back area, and showed a drawing of how it was originally used and had handicap bathrooms and a kitchenette. Each side has 2 front doors plus two egresses. Wood asked if these were being added, or if the only part that would be changing would be up-front. Simmons said that at this time his business was occupying some of the space. Janvrin asked if it meets the fire code. Garand said it did. Janvrin asked if the application was complete; Morgan said it was and noted the space was only 1400 square feet.



Town of Seabrook Planning Board Minutes

Tuesday, March 20, 2012
NOT OFFICIAL UNTIL APPROVED

MOTION:	Sweeney	to accept Case #2012-04 as administratively complete for jurisdiction and deliberation.
SECOND:	Frazee	Approved: In favor: Janvrin, Sweeney, Fowler, Chase, Frazee, Abramson;

Janvrin asked for abutter comments; there being none.

MOTION:	Sweeney	to approve Case 2012-04E – William F. Simmons and 11 Railroad Avenue Realty Trust to convert part of a 5,740 square foot commercial/industrial building into office/retail use. The property is located at 11 Railroad Avenue, Tax Map 8, Lot 107.
SECOND:	Fowler	Approved: In favor: Janvrin, Sweeney, Fowler, Chase, Frazee, Abramson;

ONGOING CASES

Case #2011-31.10-22 Proposal by NextEra Energy to amend its conditional approval of August 17, 2010 so that the stipulation (iv) reads as follows: Noise shall not be discernable at the Rocks Road residences closest to the firing range. Noise level along the existing transfer station road shall be limited to 15 dBA above the measured background of 44 dBA. The indoor firing range in question is situated off Rocks Road and immediately east of the Town's Transfer Station, continued from November 15, 2011; December 20, 2011, January 3, 2012; January 17, 2012, February 21, 2012; March 6, 2012;

Janvrin thought nothing had been heard from NextEra in re the Acenture acoustical study proposal; Kravitz confirmed this. There being no one in attendance from NextEra, **Janvrin continued Case #2011-31.10-22 to April 3, 2012 at 6:30PM in Seabrook Town Hall.**

Case #2012-01 – Proposal by Verizon and Dawson Seabrook LLC to establish an electronics store at 332 Lafayette Road, Tax Map 9, Lot 61, continued from February 21, 2012;

Appearing for the Applicant: Attorney Mary Ganz, Ganz Law;

Ganz submitted a letter requesting a continuance for Case #2012-01. Kravitz asked to provide a point of information; Janvrin agreed. Kravitz said that a letter had been sent to Wal-mart and to the owner of the Shopping Center. Earlier in the day, a Wal-mart Realty Manager had called saying they'd heard that there was a hearing and wanted to know what it was about. Further that they did not have any information or plans to look at. He asked for a sketch so that they could have some orientation, and that was sent to him. He responded that it had been received and that a member of the local store would pick up the plans at the Planning Board office. **Janvrin continued Case #2012-01 to April 3, 2012 at 6:30PM in Seabrook Town Hall.**



Town of Seabrook Planning Board Minutes

Tuesday, March 20, 2012
NOT OFFICIAL UNTIL APPROVED

Case #2012-02 – Proposal by Edwin & Maureen Adams and Waterstone Retail Development to construct a 13,000 square foot store at 337 Lafayette Road, Tax Map 9, Lot 62, continued from February 21, 2012.

Attending: Richardson, Waterstone Retail Development;

Appearing for the Applicant: Robert Clarke, Allen & Majors; Attorney Mary Ganz, Ganz Law; Scott Mitchell, Jim Mitchell, Tropic Star; Wayne Morrill, Jones & Beach Engineers;

Clarke said they had responded to Morgan's comments, submitted a prospective sketch of the front [street side] building area showing the landscaping which was of concern because this is one of the first buildings to be close to Route 1. They had also depicted the dumpster area and fencing. Clarke said they had requested a waiver on the building side photometrics, but this was no longer needed as he'd put them on the plansheets; it shows they are at "0" at the property line. Clarke said they had addressed all of the Technical Review Committee items, and brought a stamped mylar for the Registry recording. A letter from the Conservation Committee was received and the NH Department of Transportation permit was in place. Chase asked if there was a listing of items to be done. Janvrin called attention to the list in the TRC Minutes. Kravitz asked if Clarke had received the TRC Minutes; he had. Morgan asked if the planset on the table had included the TRC items. Clarke said it did, and that they had submitted the revised plans including responses to items raised by Morgan and the Planning Board engineer, prior to the Tuesday deadline.

Morgan said one issue that had not yet been considered by the Board, is the landscaping waiver request. Basically, this is a decision on whether to have more parking (52 spaces) or more landscaping; both would not fit on the site. Morgan thought that had Hawkins been in attendance this would be a particularly important item, as the Board had put a lot of effort into developing the landscaping standards. Wood asked what would be normally required. Morgan said that because the landscaping regulations were only adopted a few months before, a "normal" was not established. One solution would be to look at less parking spaces. Fowler asked how many spaces they would require. Morgan said they would be allowed to have 52, and that is what the plan shows. Janvrin noted that parking used to have a minimum requirement; now it is the maximum which would be the 52 spaces. Morgan said by doing the maximum they are cutting down on the landscaping. Scott Mitchell pointed out that this plan was part of the Kohl's and the Lowes plan they put together for the town. A 6,500 square-foot restaurant had been approved with 114 parking spaces. The Case #2012-02 shows less than half that amount of parking spaces. He asked that the Board take that into consideration. They need the 52 spaces; it's important for the West Marine business. They are currently in a much smaller building and are leaving that location to expand their business and parking. moving, Scott Mitchell said they need those spaces for their business; it is not an option to cut parking back.

Wood asked for the comparative square-footage between the restaurant and the proposed building. Mitchell said the restaurant was to be 6,500 square feet; the proposed building would be 13,000 square feet. Janvrin said about double. Scott Mitchell said the request parking is less than half. Janvrin clarified that the former use was to be a restaurant and this would be retail. Scott said that West Marine is moving because their current lot is so small that it is impossible to expand. Wood was really concerned because of the other stores with a large non-permeable [parking] area. Before it was all trees, so she was nervous about having parking spots instead of landscaping. Chase asked how many spaces would be lost if they had to meet the landscaping standards. Clarke said 10 spaces – down to a total of 42. Clarke showed another sketch with the parking field wrapping all the way around the drive aisle and would require a 10 and 15-foot



Town of Seabrook Planning Board Minutes

Tuesday, March 20, 2012
NOT OFFICIAL UNTIL APPROVED

green stretch around parking and entry drives. He thought those strips could overlap, and pointed out the area where they wanted more parking. They'd need a 25-foot green strip all the way around the parking area; the waiver request was to allow those green strips to overlap for the 10 spaces. The other waiver was for the interior green island area, but if the spaces were reduced, that would increase the landscaping percentage.

Clarke pointed out that this design is 6000 square feet less than the original surface. In 2008 when the [Kohl's] was approved, the current landscaping regulation wasn't in place so it would have been much easier. Khan said he'd been in the audience six months ago when the landscaping regulations were created. The Board spent a lot of time and effort making this the rule for the town. He felt that this would be the first time this rule was being addressed, and thought the new Board members should have the time to review the regulations in light of this case, and wanted the decision held to the next meeting. What the Planning Board adopted [with the landscaping regulation] was a wonderful thing for the town. It was supposed to work for everyone's benefit. Janvrin asked if Khan was referring to the waiver requests for the landscaping - 20 percent interior parking, and for trees and shrubs. Chase asked if the restaurant was never built, would they have had to meet the current requirements. Janvrin said they would. Chase then asked why the restaurant coordinates were even being raised. Janvrin said that the approval for the 2008 case was under different circumstances and regulations. Chase thought it was not relevant. Morgan reminded that the Board had worked with Demoulas on the landscaping and accepted that some part of the project was grandfathered, but the part that was not e.g. the stand alone retail building would have a lot of landscaping. Chase noted that that had met today's landscaping. Morgan agreed, and said that when the Kohl's was approved it was clearly understood that they would return for a full site review for the restaurant.

Janvrin asked if they now would not need a waiver for the photometric grid; Clarke agreed, and said he would work the photometric grid numbers and design into his plansheets. The wanted to be prepared for this meeting. Janvrin asked if there were cut sheets for the lighting; Clarke said they were detailed on the plan. Scott Mitchell said it was essential to have approval at this meeting and get over the hurdles; West Marine needs to get open. They previously had two stores in the town; one was closed down. Their season is getting closer with this weather; they did not have the luxury of waiting another meeting or another month. Scott Mitchell stated they got permission at the TRC to start construction to build the site. Janvrin noted they had an ALT from the NH Department of Environmental Services which includes the drainage, so they could be working on that while they wait for an approval from the Planning Board. Scott Mitchell said "yes". Janvrin understood the time constraints, but at the same time "an emergency on your part doesn't constitute an emergency on [the Board's] part most of the time. It is important to get everything right and the Chair was not at the meeting; he'd have a hard time even giving a conditional approval without the chance to go through the new regulation. He was not trying to put them out, but the Board had an obligation to the Town of Seabrook to get this right. He would go along with Khan's view.

Khan said that the Board is comprised of volunteers who come on their own time. If the Applicant doesn't have time to go to the next meeting, it is not the Board's fault. All applicants want to get approved at the [right away]. Clarke wanted to explain the landscaping requirements. Lowry said the Applicant could meet the requirements and possible get an approval at this meeting. Clarke said that four waiver requests with the respective justifications had been put together in January. They went through TRC and two Planning Board meetings. It was critical to his client's needs to get the parking spaces. He pointed out the area and said they would provide a 10-foot deep planning area with trees, shrubs and ground cover around building sides to the public access. Together with the 15-foot wide green strip, it creates a 25-foot wide buffer zone



Town of Seabrook Planning Board Minutes

Tuesday, March 20, 2012
NOT OFFICIAL UNTIL APPROVED

that is maintained all around except for one location. He commented that some towns insist on the 15 + the 10, and some towns believe they should allow the overlap. The spirit and the intent is to screen the parking lot. He thought that the 15 feet was pretty heavily planted. He thought they were addressing the spirit and the intent; it wasn't like they were taking away the buffer completely. Clarke was speaking about regulations in the Town of Bedford where he does a lot of work. They have submitted a typical waiver request for when there is overlapping. They were not asking to increase the maximum percentage; it was at four spaces per 1000 square-feet, whereas most retail would want five. They were at the 52 spaces maximum, he thought most retail would want an additional 12 or 13 spaces i.e. five spaces per thousand. The Applicant was not asking to increase the maximum.

Morgan indicated there were other issues besides landscaping. Chase asked if the landscaping should be resolved at this point. Morgan said that resolution would be when the board thought the time was right. Abramson recalled that during the past year the general intent was for improving landscaping and not judging a proposed building just on how it looks by itself compared to what is there now. He thought a close look might find some errors, but it looked like an improvement. He thought this should go forward. Janvrin asked if Morgan was referring to the letter of March 3. Morgan noted that Scott Mitchell had stated that this proposal was done in conjunction with the 2007 Kohl's approval, and wanted to summarize certain aspects for the members of the Board who were not familiar with it. Morgan explained there was a lot of time spent on the potential traffic impact of the Kohl's. One of the ways to get traffic off of Route 1 was to create cross-connects between retail centers, and there was substantial discussion about a connector between Boynton Lane and the Wal-mart. This has not happened even though it was part of the Kohl's approval. He asked that Scott Mitchell provide an update of where the right-of-way from Wal-mart stands.

Scott Mitchell said that was a separate application, and that the only reason that connector got pulled in to the Kohl's was because Robert Korff, the developer, had control of the property which is on the other side of Route 1 (the subject of Case #2012-01). Mitchell said if Korff had not had that control, there would have been no cross-connection discussion; this was a separate lot that Mr Adams owned. Because they had to move the access to the traffic light, this parcel became involved. He said it had never been part of the Kohl's. Morgan thought that Mitchell had earlier said the opposite. Morrill said that he and Ganz had been moving forward on the cross-connect for the Verizon proposal and granting the easement on [the back of] their property, and were actively working with Wal-mart and the landowner to move that roadway up to [the Wal-mart property]. They have made a commitment to put in a road on that easement and they are actively moving forward with the whole connector. Morrill said they had granted the easement on the back side of the property that Korff owns as part of that approval. Scott Mitchell referenced Minutes re Kohl's, and said from the very day that the Board forced this issue on Korff they had maintained that they could never make Wal-mart take this action; they do not own that property.

Scott Mitchell said that Korff is willing to build the access road and put the money in escrow if necessary. He asked what more could be asked of them. Morgan had hoped that there would have been a good-faith effort to negotiate an easement. Scott Mitchell said that is what Ganz is in the process of doing. He asked if the Board wanted to hold them hostage to that. Morgan said he heard the same thing in 2007. Scott Mitchell said that from day one they could never make Wal-mart do anything. He said that Morgan knew this because he was there, and asked if that was or was not true. Morgan thought is the process had been started in 2007; they would be a lot further along than they are now. Scott Mitchell said they could not start the process because they had an existing lease on the property. They couldn't force the then existing tenant, and they agreed to connect to the property and escrow \$30,000 to connect to the Wal-mart. Scott Mitchell



Town of Seabrook Planning Board Minutes

Tuesday, March 20, 2012
NOT OFFICIAL UNTIL APPROVED

did not know what more the Board wanted; they could not make Wal-mart do this.

Paula Wood asked if negotiation with Wal-mart had been gone on during the four or five years. Ganz said it had just started in December 2011 or January of this year. It was thought that the building lease would be up in 2013, but actually it's in 2012. Paula Wood asked why. Ganz said the owner of the Wal-mart shopping center had changed; they had been talking with the previous owner. Their hands were tied until the lease expired at the end of February. Scott Mitchell said they thought the lease went to the end of 2013. Ganz said the date was in the Planning Board approval. Ganz said the problem was they were taking on a "giant"; Kravitz had given some good information of a contact at Wal-mart, and they are working with the attorney for the shopping center. There are multi-layers of people to go through. Paula Wood asked if the knew it was going to take all this length of time, why hadn't this started before the tenant left. She knew that they couldn't act on it; nothing could be built until the tenant left. Everyone knows there would be tons of red tape. Ganz thought they had not realized that there would be substantial problems in getting all this consent. They are working on it and moving ahead as quickly as they can.

Janvrin referenced Morgan's letter of March 3, 2012 in re a few things the applicant had tried to address, but with which he was not yet happy. He thought the depiction in re the dumpster was a nice rendition with the screening, however, he wondered if there was any reason why they couldn't make an attachment to the building i.e. a continuation of the wall at a lower level. Clarke asked if Janvrin wanted a block to match the building façade. Janvrin envisioned this as 10 to 12 feet out from the building, out of stucco to match the building façade, and asked if there was a reason this could not be done on the north side of the building. Richardson said they could extend this on the north side of the building, and asked about the height. Janvrin thought above the height of the dumpster. Richardson suggested 8 feet which would be above the dumpster, and only on the north side. Janvrin thought the dumpster would be closest to the building. Clarke said on the street side with wood the rest of the way, stopping at 15 feet from the property line to preserve the setbacks. Janvrin saw this as a continuation of the building façade, and asked if there would be room for this. Clarke thought this could be in the plan, but he would have to check if there was a door in the way. Richardson said there was not.

Janvrin said that sidewalks would be an issue for this case and for Case #2012-01. Currently there is sidewalk on the state's right-of-way and accepted by the state. He thought the Applicant was not looking to change that. Clarke agreed. Janvrin asked if that had been negotiated under the Kohl's approval. Clarke said it had. Janvrin asked if they were putting any sidewalk up along the access road to the property from the existing sidewalk. Clarke pointed out that that sidewalk exists and a crosswalk into the rest of the development area. Janvrin asked if it was striped. There was no painted area yet. Janvrin asked if this would be depicted. Clarke thought they would paint the crosswalk so people. Clarke said that Steven Ireland of NH Department of Transportation told him that the Agreement that the town signed actually covers anything that had already been there, and that the Town would maintain the ADA accessible points. Janvrin believed that the sidewalk that the town agreed to maintain was on the Boynton Lane corner and was only a ten-foot section. The town does not have a maintenance agreement for the sidewalk that Clarke was describing. Clarke understood from Ireland that coverage was only on edited pieces. The whole sidewalk is existing, so the remainder of the sidewalk would not be changed so maintenance would be by the existing developer.

Janvrin pointed out that Morgan had said the 20-foot wide Lafayette greenbelt is not clearly depicted, and asked if that had been changed on the plan. Clarke said a 12-foot wide maintenance easement was shown and a 20-foot greenbelt both come from a right-of-way.



Town of Seabrook Planning Board Minutes

Tuesday, March 20, 2012
NOT OFFICIAL UNTIL APPROVED

Janvrin asked if they overlap. Clarke said they did, but are depicted on the plan as two different "hatches". Janvrin asked if the plantings were on the inside. Clarke said their plantings were basically on the 20-foot greenbelt line. Janvrin asked if they were part of the greenbelt. Clarke said they were and would not be affected by grading. Khan asked Morgan for his concerns. Morgan said most of the items in his March 3 memorandum had been addressed. His key concerns, sidewalks and dumpster, had already been addressed by Janvrin.

Janvrin thought the sticking points were the waiver requests. Clarke said that three of the waivers concerned 10 parking spaces that would otherwise be wiped out. Paula Wood asked if the Board maintains its regulations and the Applicant doesn't get those 10 spots, if the Applicant would not be interested in the property. Richardson said they are in a very difficult situation with West Marine now, because they want to open for the 2012 season. He thought if they don't get this going they very likely would not; he was saying this as a factor. Paula Wood asked if Richardson was saying that if the waiver doesn't happen and Board held them to the regulation, the deal would not happen. Richardson said that ideally retailers want 5 cars per thousand and this is 4 per thousand. Reducing 10 spaces is kind of like cutting off their ability during the peak summertime. Janvrin asked about the ratio at the current location. Richardson did not know the square-footage but they were doing a project in Fairhaven Massachusetts that has 4.5 per thousand. They also are having three designated double spaces for trailers so they won't block the aisles when pulling out, which also changes what they are trying to do and they need the total spaces.

Morrill said currently, the West Marine building is at 6,000 square feet and 4 spaces per 1000, the same parking ratio as for the new building which is bigger. Richardson said it is not the same store as the town is used to. The store in Fairhaven has more apparel and traditional boating items. It's still all boating, but has a better selection of materials. Morgan asked if anyone from West Marine was attending the meeting. Richardson said he was representing West Marine. Janvrin thought that in the TRC, the CEO had asked about outside sales. Richardson said there would be no materials stored on the exterior site after business hours. Janvrin asked if the 7-foot area shown on Sheet C-1 was the only outside display area. Richardson said that was correct, and only during business hours. Janvrin asked if that was for dinghies, kayaks, etc. they want the area clearly define against the building; nothing in the parking lot or overnight. Clarke said this was notated on the plan. Janvrin asked if they would sell boats, and Richardson said only kayaks and the like.

Chase asked if any parking spaces had been designated for compact cars, and thought the Board might have discussed changing the widths. Morgan said that had not come up. Richardson asked if the Board would entertain shortening the depth of the space for smaller cars. Janvrin asked if that would help them be in compliance. Richardson said it would not bring them all the way but would give more green space and lessen the waiver request. Morgan asked how they would keep the SUVs from parking there. Richardson said they would clearly use signage that it was for small cars. Janvrin said he had just left a building where SUVs were parked in an area reserved for small cars. He did not doubt Richardson, but consumers do not pay attention. Abramson said optimism was in the face of experience. Wood noted that when the Applicant came to the Board, they knew about these regulations Richardson said they made the retailers aware of the process to go through, but typically retailers are very late to decide and give the authorization to pull the trigger. They [submitted the application] as soon as they were able in the short time frame to get everything together and complete.

Janvrin pointed out the letter from Clarke to the NH Department of Environmental Services requesting an expedited Alteration of Terrain process, stating that Waterstone Development had



Town of Seabrook Planning Board Minutes

Tuesday, March 20, 2012
NOT OFFICIAL UNTIL APPROVED

secured a tenant for the proposed project; to ensure the tenant the project had to be complete by July 2012. He understood that they are under the gun and polled the Board as to how they felt about issuing the requested waivers, or should the case be continued so the Applicant could return with a revised plan that is in compliance. Khan felt that the Board worked very hard for at least a year to bring that [landscaping] regulation into the book. The Board members and the town felt this regulation was needed for the Seabrook's future. As soon as the regulation passed, the waiver requests started. He suggested that the regulation be taken off the books, because everyone would want the waivers.

Khan said there was a lengthy discussion on the day the regulation was adopted; Demoulas argued about it. Thanks to the Rockingham Planning Commission for producing something that all the Board Members would be happy with. Khan understood that the town needs the business in this economy, but there is another way to do this, because they have a good relationship with the Kohl's developer. All they have to do is put up a few signs indicating there is more parking in the Kohl's parking lot which is open as nobody parks there; it is never filled. That way, Seabrook's regulation stays and applicants would have to abide by them. Sweeney agreed. Paula Wood asked why spend the time and effort doing the regulations and going forward, if the Applicant doesn't comply. She wanted to make sure that this Applicant was well aware of the regulation before the submission. Fowler agreed, and thought new members should have time to go over all the laws that they may not be aware of yet. Lowry also agreed, saying that the applicant could have started back last year and get a head start. Why should they put a gun to the Members' heads because they are in a rush.

Chase was also in agreement, but wondered if there was another way of redesigning the parking. He asked if there was any other method of configuring the parking. Clarke said the most efficient way of parking is double stacked with the drive aisles. He pointed out the area where that was not done because of the needed turning radius and snow storage. Chase pointed out where snow storage could go [if there were fewer spaces]. Clarke said changing the snow storage area would mean getting rid of plantings because the snow would be piled on top of the plantings. Chase asked if that area was all plantings. Clarke said it is a buffer zone of 15 feet and 10 feet with mostly plantings. Chase thought there would still be grass. Clarke said it was all planted in the buffer zone; they had actually removed some plants to get in the snow storage. If the Board would not budge on this, he discussed with Richardson alternatives including losing the double spaces. Chase commented that he could see ways of doing things. Frazee agreed with Khan that the extra space is available in the huge Kohl's lot. He thought anyone coming along with a double trailer would want that area, and not a smaller area with deterrents.

Abramson had no objection to the waiver. He thought the Applicant had gone to the intent and with a lot of effort. As much as is practical, Seabrook ought to retain its reputation as a pro-business town and understand that business owners have a lot of other problems and issues to run with. He thought that the regulations, rather than being restrictive set of specifications, ought to be a standard for applicants to meet or do better. He had no objections if they meet the intent going forward. Scott Mitchell said the Applicant did not have a parking easement for the Kohl's. To get one would require going back to Kohl's corporate. They had tried to get reciprocal easements with the Lowe's and could not get that. He said this is not an option.

Richardson understood that this was a new regulation and that the Board was concerned with setting precedent. In light of this, Richardson said they would remove the 10 parking spaces in question as well as the double spaces. With some other adjustments, the number of spaces would be 50; that would eliminate the waiver. Janvrin said as long as they come into compliance: other than the waivers, he did not think there were any other sticking points. He asked



Town of Seabrook Planning Board Minutes

Tuesday, March 20, 2012
NOT OFFICIAL UNTIL APPROVED

Richardson if they agreed. Richardson said the “green” would actually increase by about 400 square feet. Khan asked if Morgan agreed that this would meet the town requirements. Morgan thought this was an interesting proposal, but that the board did not have a siteplan depicting the adjustments. He thought Richardson was looking for a signal from the Board as to what his options were. Chase asked if the Board would be in favor of making eight of the spots for SUVs to gain another spot, noting that a business needs numbers. He thought that would be a reasonable approach so the landscaping would not be lost. Janvrin thought that if the Applicant could meet the requirements for the landscaping regulations, it would be fine, because he believed that all of the TRC, the Planning Board engineer, and Morgan’s comments had been addressed. Janvrin indicated the case could be continued until April 3, 2012, and asked for the deadline for submitting revisions to the Board. Kravitz said that would be Tuesday, March 27, 2012 at noon.

Clarke asked if they could get a conditional approval because of removing the waivers. Janvrin said they already had the ALT i.e. the right to start working on that immediately. Clarke said the tenant really wanted a conditional approval, and would take the risk of the appeal period. His issue is that the lenders wanted to see the approval. If they do not request the waivers, and return with a siteplan that conforms, he thought that a reasonable compromise. Khan wanted Morgan to state the conditions. Morgan said the risk would be acting on a siteplan that the board had not seen. Janvrin could not remember doing that. Lowry commented that they could return with much different parking. Clarke said they needed an approval, so they would remove the 10 parking spaces. If necessary, they would return with a modified siteplan to request additional spaces. He asked if that would work. Wood said there still would not be an accurate siteplan drawing before the Board. Clarke said if the 10 spaces are removed, they would be conforming; a waiver wouldn’t be needed. He thought there was no reason why the Board could not make that motion, and asked for Morgan’s view. Morgan said this would be unusual, but would be less risky than also adding spaces without being sure where they would be.

Janvrin asked if the Applicant would return to the Board if they wanted to modify the parking field afterwards. Clarke agreed, indicating that the number of parking spaces would be 42. Janvrin asked if the Applicant understood that under a new regulation, there would be a fee for a returning application to amend the plan. Clarke said that would be fine, as they could leave this meeting knowing the Board was comfortable with the plan. Wood thought the number of needed spaces was not clear because they had referenced the number of spaces across the street. She asked if they needed the spaces or no, and would be uncomfortable taking out spaces and then coming back [to add them in]. Clarke said they would revise the plan. Wood said one minute they want all the spaces, and the next they don’t. Morgan said that the Applicant was not present. Wood would have felt more comfortable having a plan in front of her that was ok’d by someone.

Clarke said every time a client goes back to a retailer they renegotiate. The compromise with the Board [from 52 to 42 spaces] is a hard thing to do with a lease, but they could say that without the 10 spaces the plan would completely conform by right without any waiver requests. Wood thought they intended to return to reconfigure. Clarke said that would depend. If they could not renegotiate with the Board, they would possibly have to return to the Board to add a couple of spaces. Chase said any applicant could do that. Wood said as that intent is already known, she would not feel comfortable going ahead and knowing they would come back with changes. She wanted to see the changes in a plan, and then go forward. Fowler said that the Board would not have to approve changes if they did come back. Wood thought they would take the Board to Court in that event. Clarke said it was not a given that they would come back to the Board; they could negotiate. He emphasized that the plan is by right by removing the 10 spaces, and with no



Town of Seabrook Planning Board Minutes

Tuesday, March 20, 2012
NOT OFFICIAL UNTIL APPROVED

waiver request. Richardson noted that Waterstone is the applicant.

Morgan was ok with the proposal to take out the 10 spaces, because Clarke was right – the Board could say no if they came back for more spaces. Janvrin asked Morgan, if the Board gave a conditional approval based upon removing the 10 spaces, could that be conditioned on Morgan’s review of that revised plan before the Chair signs it. Morgan said he could handle the revised plan with the spaces removed and the additional grass or plantings. Janvrin thought that might satisfy some Board Members. Janvrin asked if any Member had concerns about items raised in the TRC, or by Morgan or the Planning Board engineer. Morgan said the technical issues had been addressed. Janvrin noted that the security amount specified by the engineer was \$109,340. Morgan said that the stipulations in the approval had to show up in the siteplan. Clarke agreed. Janvrin preferred that the stipulations be shown on the cover sheet, asked if anyone had stipulations to add; there being none.

MOTION:	Chase	<p>to approve Case #2012-02 – Edwin & Maureen Adams and Waterstone Retail Development to construct a 13,000 square foot store at 337 Lafayette Road, Tax Map 9, Lot 62, conditioned on:</p> <ul style="list-style-type: none"> (i) removal of 10 parking spaces to conform to new town landscaping regulation; (ii) construction of stucco wall extension and screening for dumpster; (iii) moving the dumpster to meet the setback requirements; (iv) provision of security in the amount of \$109,340 prior to the preconstruction meeting; and (v) submission of revised site plans satisfactory in the entirety to the Town Planner, after which the Chair may sign the plans.
SECOND:	Khan	Approved: In favor: Janvrin, Sweeney, Fowler, Khan, Chase, Frazee, Abramson;

ADD THE FOLLOWING AMENDMENTS TO SEABROOK’S SITE PLAN REGULATIONS:

A) to Section 2 of the Site Plan regulations:

A change of use sufficient to invoke Planning Board jurisdiction is:

- **The change of one type of use to another, e.g. retail to restaurant; or**
- **Any use proposed for vacant land or buildings.**

Should a use cease for one year, any subsequent use shall be subject to site plan review.

Garand noted that this proposal had been discussed at prior meetings. A building that had been dark for more than a year would have to come for a Planning Board. Morgan said that this is a clarification of an existing statute to give the CEO guidance and more specificity as to who comes to the Planning Board and who does not. Janvrin asked if this would apply to the Verizon site in re the signage. Garand said the site had been vacant for more than a year, so this provision would apply. Khan’s view was that when someone comes to the building inspector or the CEO, he may send them to the Planning Board for the Board’s knowledge and to decide on the next step. In this case, it is an existing business use that should be pretty easy. Garand said coming to the Planning Board lets abutters know what is going on. Many sites just evolved over the years so there is nothing for enforcement to go back on. Once the Board looks at a



Town of Seabrook Planning Board Minutes

Tuesday, March 20, 2012
NOT OFFICIAL UNTIL APPROVED

development and puts something in writing, it is easier for enforcement. This clarifies what has to come before the Board.

Janvrin recalled the dog track proposal to use its site for classic car displays, and asked if that would be covered. Garand said that was an expansion of use so they had to make application to the Board. Different sections apply to different uses. Janvrin asked that if a site was currently a pizza house and changes hands, did it have to return to the Board. Garand said not if it had had an approved use and opened up in less than a year [after the previous close]. Khan asked if a developer had built a space and wanted to rent it out, did they have to come to the Planning Board with the tenant. Garand said it would depend on the approval. For example, if there were a site approval that had not been occupied for a year, it would come to the Planning Board. Also, he does not issue an approval until the Planning Board had actually issued an approval for that site use egg retail. It's a matter of checks and balances; the town wants to know what is going on, and the Planning Board has jurisdiction. Also, the abutters would know that a retail facility or a glue manufacturing facility would be there.

Janvrin thought this might have applied to the new retail building at the north end of the Market Basket. Garand said that was an expansion. Janvrin asked if after the building is built a proposed tenant would come before the Board. Garand said if it had never been occupied and had been approved for a retail use, that would be ok. But if a section had been dark for more than one year, it would have to come back to show what would be there, hours of operation, dumpster issues, and the like. It cannot change the use of the property or the intensity. Khan said that Garand sending people to the Board is the only way residents can know what is coming to their neighborhood. He thought it a very good practice for the Planning Board and residents to know what is coming to the town, who is doing business here, and what kind of business. Garand agreed. Janvrin recalled the case where Mary Ganz came to the Board with the gold purchasing business, and asked if this change would not have required them to come to the board. Garand said that space had been vacant for more than a year and had to return to the Board. Garand said this would have clarified that situation i.e. that it had been vacant for a year and needed to explain to the Board and the town what they intended to happen. Janvrin asked for comments or questions. Wayne Morrill asked if that would be an expedited application. Garand said as long as there was no expansion or change in the footprint. Janvrin said it would be approving the use.

MOTION:	Janvrin	<p>to add the following to Section [] of the Site Plan Regulations [] :</p> <p>A change of use sufficient to invoke Planning Board jurisdiction is:</p> <ul style="list-style-type: none"> • The change of one type of use to another, e.g. retail to restaurant; or • Any use proposed for vacant land or buildings. <p>Should a use cease for one year, any subsequent use shall be subject to site plan review.</p>
SECOND:	Abramson	<p>Approved: Unanimous</p> <p>In favor - Janvrin, Sweeney, Fowler, Khan Chase, Frazee, Abramson;</p>



Town of Seabrook Planning Board Minutes

Tuesday, March 20, 2012
NOT OFFICIAL UNTIL APPROVED

**B) Precede Section 10.025 with the following:
“For the purposes of this section,”**

Janvrin asked Morgan why this phrase was needed. Morgan said that Garand and Ganz had been referring to this regulation and coming to different interpretations. Adding the proposed phrase would make it more specific so that people wouldn't be reading the same thing and drawing opposite conclusions. This phrase would pertain to the traffic section only for the purposes of calculating traffic, and adds clarity to the regulations. Janvrin noted that this proposed amendment had been discussed at previous meetings, and asked for questions; there being none.

MOTION:	Khan	to precede Section 10.025 with the following: “For the purposes of this section,...”
SECOND:	Abramson	Approved: Unanimous In favor - Janvrin, Sweeney, Fowler, Khan Chase, Frazee, Abramson;

OTHER BUSINESS

Morgan related that he'd had a series of emails from Garand re condominium approvals for a particular property. In connection with a request for a building permit, Garand had noticed that a building would be built in a different location than had been approved, and also the common area boundaries were in a different area as well. Garand thought they would have to go to the Planning Board. Morgan called a Local Government Center attorney for guidance without success. He also received a call from a Seabrook surveyor wanting a resolution. Morgan said after discussing this with Garand they decided to go back to the Planning Board for some general direction, especially for the Building Inspector, in such a situation where the Board had approved a condominium conversion and the building and the common areas were located in a somewhat different location. Morgan said the question was not being raised relevant to the specific property matter that raised the question.

Morgan said notwithstanding, the LGC attorney had told him it would be beneficial to figure out what the town's interest was in this type of situation, and why was Seabrook in the business of approving condominium conversions i.e. what was the town trying to ensure what does or doesn't happen. Morgan told him that one thing was to make sure that each unit had their own water meter in re paying their bill and the potential that a shut-off might be required, and that the Water Department had access to the meter on the property. Morgan thought that if Foote were in attendance, she would want to be sure that the common areas get divided up so that one unit doesn't get a swamp area while others get dry land. He brought this to the Board's attention so it could give this some thought and give him and Garand some guidance as to what to do if they find that condos are not built as the plan showed.

Garand said another reason to ask for the Board's guidance was that when the Board looked at a common driveway on Dow's Lane, the result was that things were not done in the correct manner and they had to return to the Board several times. That is why he called Morgan's attention to a house not being built in the right location, and the design of the home and the common area were also changed. Janvrin asked if the utilities had been changed. Garand said



Town of Seabrook Planning Board Minutes

Tuesday, March 20, 2012
NOT OFFICIAL UNTIL APPROVED

they had been extended on the property. That is why he and Morgan were asking for the Board's direction.

Janvrin asked for the Board's jurisdiction. Morgan said it was driven by RSA 356B which gives about 95 percent of decisions to the owner and about 5 percent to the Planning Board. There is one page of condominium regulations in the Town Land Use Regulations. Owners are asked to bring in a plan, show the utilities and meters as separate for each unit, show the wetlands, the common areas, and where the house would be built. Janvrin added that they are asked to provide the condominium documents as well. Morgan said there are usually thick condominium documents, so the applicant is asked for a certification that they comply with 356B; some years ago the Board determined that it would not decide whether condo documents were copacetic; he noted that the Town of Hampton spends a lot of time scrutinizing condominium documents. Janvrin noted they have an in-house legal department.

Janvrin asked if the Board had made a decision resulting in recorded documents. Morgan said it was approved, and restated that he was not trying to pin the Board down to the specifics on this case. He and Garand were trying to get some policy direction from the Board so they know how to handle these types of situations in the future. Basically the choice is to ask the owner to return to the Planning Board, or say that it is not really interested in this type of situation. Janvrin asked if this meant so long as when the plan was first brought to the Board they met the requirements as to utility shut-offs. Morgan said the question for the Board was what kind of issues they wanted to keep constant and which ones it did not care if it was moved around. Khan asked at what point the Building Officer learned about this i.e. was the building already built. Garand said it was not. During the time that the developer went into the area to clear the land for the house, they dropped a tree on a town shed structure and did a little damage. Khan said he had seen the area. Morgan noted that that would not prejudice the decision. Garand had asked why they were clear cutting the rear of the lot, he was told that they wanted to build a house there. At that point he brought to their attention that the common areas were actually on the other side, and they were cutting on the wrong side of the lot. He was told that an agreement had been made with the other condominium owner to revise the condominium documents; that is how this came to light. Nothing had been installed; only the clearing had been done.

Khan thought that the Planning Board could simply say that any change e.g. a footprint or the like needs to return to the Planning Board. Wood wanted to know what would happen if "condominium" were not in this equation. For example, what would happen if an applicant [e.g. West Marine] did what was necessary [for an approval] and then decided not to follow what was approved – e.g. put the building in the back, moved the dumpster, and did not have enough parking. Garand commented that condominiums were just a form of ownership and the town's interest would be if the lot were large enough for two separate single family dwelling structures. If they came before the Planning Board with a proposal and gave a promise as to what they were building, and only built one-half of what they promised. Then the economy changed and they want to change what they promised the town. They would still meet the town zoning requirement and only changing the condominium aspect. Wood said anyone else would have to come back, if there were plans that were approved. She did not see the difference for a single owner or a condo that had been approved. If they want to do a change, they need to come back. Khan agreed i.e. to make a trip to the Planning Board. Wood asked why the Board is approving things if people are going to do what they want.

Janvrin asked for Garand's feeling. Garand said he was looking for direction and does what the Board wants. Chase said from the developer's point of view, if he had come to the Planning Board with a parcel of land and asked to create two lots,, he would have to tell the surveyor what



Town of Seabrook Planning Board Minutes

Tuesday, March 20, 2012
NOT OFFICIAL UNTIL APPROVED

kind of a proposed house was planned, not the specifics. If he were granted the condominium conversion of this parcel of land and he decided not to build the exact house, but something that still met all the guidelines and requirements of the town, he was not sure why there would be any objection. If he had a 2,200 square-foot condominium and wanted to put on an addition, would that mean he had to come back to the Planning Board. Garand said that is the clarification he is requesting. People put on additions to condominiums all the time and do not return to the Planning Board because the main structure is there and the use of the property is outlined by the condominium documents. Janvrin thought that would be an accessory use. Wood asked if a person with a single family home or a mobile home was going to put on an addition or a shed would have to return to the Planning Board. Garand said not for a single family home. As long as the zoning allows the use, it would just be to his office for a building permit and governed by the condominium documents.

Wood thought the question was about moving the location of a house, and not about an addition. Garand said it was about moving the utilities and changing the location of the utilities and the structure; it was not just a minor change. Janvrin's opinion was that the Planning board dealt with mergers and separation or subdivision of lots. A condominium conversion can be viewed as a merger if two lots coming together or coming apart. In that case the Board does say where the line is; in a condominium conversion it does not. He referenced the Murray condominium conversion and if the town had had to review when they were put away. Garand said the town had some responsibilities, but he wanted to know what the limitations were, and how he should act. Janvrin asked if , when there is a merger of a lot as occurred recently on South Main Street, it was not up to the Board to dictate what goes on the property, only about the moving of the lot lines.

Garand said condominiums were a form of ownership and the Board wants to see that that ownership is equal. Janvrin asked if the Board has an interest in that. Garand said they want to be sure that the utilities were shown, and that the floor plan is shown on the plans that are recorded. If that takes place outside of the Planning Board, that is one thing. A decision is needed about what has to come back to the Planning Board and what does not. Chase thought if it meet the requirements of the CEO, and there was a change in the size of the proposed structure listed on the plan, it seemed that the new plan should be recorded at the Registry of Deeds as the building would be in a different location. Janvrin said when there is a site plan, the buildings and structures would be on the recorded plan; if there were any changes they would definitely have to come back to the Board. But with a lot merger or residential subdivision they would not have to return to the Board to move the location of a house.

Garand asked Morgan who would record the changed plan. Morgan said when a condominium conversion is approved, the Secretary records the mylar. Garand said that what would have been recorded would not reflect any changes; that would be the old approval. He asked how the Registry would denote that. Ganz said it would be as an amended site plan and amended condominium documents. Janvrin asked if this was actually an as-built after the fact. Ganz agreed; the town would end up getting an [informational] copy from the Registry. Chase said he'd lived in a condominium at the Beach where the entire building was not built according to the plan recorded at the Registry; it's done all the time. Ganz said this came to light because someone wanted to divide up their limited common area a little differently. That is how the issue came up with Garand as to putting the house in a different place.

Ganz said that most towns don't even have their Planning Board look at this. The only thing that might be a concern would be if the new plan is still complying with having a disproportionate share of the wetlands on either side. She thought that Garand could determine that and not have



Town of Seabrook Planning Board Minutes

Tuesday, March 20, 2012
NOT OFFICIAL UNTIL APPROVED

it be an issue. She thought it quite burdensome for a couple of neighbors to have to file an application to have their common area in a little different place. Janvrin thought then the Board would have to notice the abutters. Garand said that the recorded plan that the Board was looking at showed that the structures were actually close toward the middle, front of the parcel. They relocated the second unit behind the first unit with more separation, which both owners thought was a better plan. It gave them the ability to relocate the structure where they were both happy. Janvrin asked what would happen if Ganz had not come to the Board. Garand said there would have been a building application and he would have compared that to the original plan and condominium documents, and he would have brought it to the Board. Janvrin said that at that point the Board might not care. Garand said then the Board would waive jurisdiction. Janvrin thought then [Ganz] would have to submit an as-built to the Registry, and the town would be copied. Garand said the Assessing Office would receive a copy of that plan and the condominium documents would be on file in the Registry. Janvrin asked if the Planning Board would be notified as well. Garand and Kravitz said it would not. Kravitz said if someone came to the Planning Board and asked to review the file, it would have nothing in it regarding and changes [subsequent to the approval.] Garand said the first unit would meet the requirements of the first section of the condominium conversion documents; the second would not be similar.

Janvrin asked, jurisdictionally, what interest did the town have. Garand said that is the decision that the Planning Board had to make i.e. did it want to review where the dwellings are, the utilities, the portion that is common areas, the driveway curb cuts etc. Morgan did not want to make the decision more difficult, but had been told that a certain commercial shopping center developer was seriously considering condominiumizing it. Therefore, the Board should keep in mind that whatever decision it made might well apply to commercial development. Janvrin thought that the decision would then be easy. Garand said the Board might want to look at this case by case and whether to grant a waiver upon request; it could say that a change to a condominium plan requires review by the Planning Board as to whether it would waive jurisdiction. Janvrin thought the Board had the ability to require an as-built. Garand agreed, and said the Board could also require a copy of the new condominium plans and/or condominium documents for the file.

Khan noted that Ganz had said that a lot of towns do not bring condominiums to the Planning Board. He asked whether the CEO could decide who should come before the Board based on how much change is going on with a property, which would create an easier situation. Garand said that would make him the deciding factor; he looks at zoning compliance, but condominiums are a form of ownership and he does not have that expertise. He can look at the utilities, and the DPW Manager can look at the driveway cuts, but it would not meet what was approved originally. He wanted the Board to decide what it wanted to hear. In the case of commercial property, Janvrin's opinion was that it should be built to an approved plan; if not, an as-built should be submitted. This is after the fact and has been happening too much lately. He thought the commercial side was cut and dry; a security would ensure that the town could make it that way. Garand said someone could come back and condominiumize anything, even a dumpster; it's a form of ownership.

Wood supposed if she lived next to property that had been condominiumized, and it looked good, the houses would be built out front and the common area in the back where she lived. When construction starts and the builders decide they will use the front as common area and build the houses in the back next to hers. She thought that if abutters are notified, and the Planning Board and the abutters think that the plan would be build to what they saw, it would not be appropriate to wake up one morning and have a house built somewhere else – whether condo conversion or not. If someone brings a plan to this Board, and it is approved, that is the



Town of Seabrook Planning Board Minutes

Tuesday, March 20, 2012
NOT OFFICIAL UNTIL APPROVED

plan that should be built, or come back with the changes. She was bothered by the as-builts. Why have the Planning Board spend time and effort on plans or regulations, if someone who doesn't want to follow the regulations. Garand asked if Wood felt that if there are changes the abutters should have notification. Wood believed if there was a change on a plan the Planning Board should know about it and approve it. Janvrin asked if Wood would require them to come in again to change a condo conversion that was approved. Janvrin asked if in that case it would be a full application to the Board for a condominium conversion.

Chase asked if Morgan knew what other towns do. Morgan cited Hampton with two in-house attorneys. Janvrin asked for Morgan's opinion. Wood thought that Morgan would not have a firm response. Wood asked if Ganz would comment. Ganz thought it should not have to return to the Board unless it was changing something that was initially approved, like wetlands. It's a cumbersome process; they should be able to amend their documents and either the Planning Board waives jurisdiction, or they record them at the Registry, with the town getting a copy. Garand agreed with Ganz, if they are not changing the utilities or the number of structures, and it is a simple internal change inside the property. As long as the Board knows what's going on and receives a copy of the plans for the file, then they could actually pay for the recording fees and go through the Planning Board as always, and the Board could waive jurisdiction on a case by case basis.

Khan said they would still be coming in front of the Board. Garand said as long as it is an internal change and not changes to the utilities or driveway cuts for the roadway, and the Town Planner reviews the plans and the condominium papers. Khan said they would be coming before the Board to ask for a waiver. Garand said that would take care of everything because they would be coming before the Board to ask for a waiver and amending the approved condominium declaration. That way a waiver request to amend the condominium approval, that had already been before the Board, would be requested for the changes. Garand thought that would cover everything; the town's file would be complete and the Planning Board would be aware of the changes. Garand said this did not answer Wood's question in re notifying abutters. He thought if it were under one owner, they wouldn't need a second notification on a lot larger than 45,000 square feet because that's what zoning allows. Wood understood, but said that if she had been notified and sat through a hearing, then that is what it should be. She thought that a placement of a house would be a large issue; she would be offended to wake up one morning and find that the lot next door was totally different; why bother to tell her what would be done in the first place, if it's not going to stick.

Morgan said the problem with the waivers as described (above) is that the abutters would have to be notified. Ganz asked if they could just send a letter to the Planning Board for informational purposes. Janvrin asked if the regulations would have to be changed to stipulate this. Morgan said it was always a good idea to be clear about the Board's policies so there is no question that it applies equally to everybody. Garand said this could be done with residential, but he would stick firm about commercial, Janvrin agreed. Khan asked if Morgan could have a recommendation for the Board to discuss at the next meeting, rather than make a decision at this meeting. Morgan would do a draft, but preferred to reflect the Board majority sentiment. Khan did not want to stop the discussion, but wanted to hear his recommendations. Morgan said that at this meeting, he'd heard that nobody really cares if the house looks exactly like it they thought it would. Moving the building is more problematic; the Board would have to decide if they owe it to the abutters to notify them.

Chase asked if he came to Garand for a building permit, would he be required to go to the Planning Board. Garand said if the shell was built as approved and Chase wanted to expand it,



Town of Seabrook Planning Board Minutes

Tuesday, March 20, 2012
NOT OFFICIAL UNTIL APPROVED

he would have to do that as a condo owner. As long as the bare bones of the structure is there, and it were for a porch or a deck on the structure, he'd allow it. Janvrin asked if this would be an accessory structure. Garand said it would have to be something that was allowed through zoning. Chase said that would not be recorded. Garand agreed, because the main structure was recorded per the approval. Janvrin asked about the Assessor. Garand said the Assessor would be contacted for the building permit. Assessing is not the issue. It is the notification and the condominium conversion. Janvrin added having an accurate plan in the Planning Board. Garand said the issues would be the utilities, curb cuts. It's two single family structures if that is the zoning. Janvrin asked about the setbacks. Garand would look at the setbacks in re the building permit.

Garand said this matter came up and he did not have an answer. Ganz said in particular, there is a developer who wants to get a building permit and start building with an agreement with the other side. Morgan thought it wouldn't have come up if the tree hadn't fallen on the shed. Garand said it would have come up with the building permit. Ganz said they were in a grey area with the regulations. Morgan asked if the building were to move 50 feet or more, should it come back to the Planning Board for review. Janvrin polled the Board. Chase disagreed, if it meets all the setback requirements. By consensus, other members said it should return to the Board. Morgan asked if a fifty-foot rule should be drafted. Janvrin said to do this, and asked whether that answered the particular building permit matter that Garand raised. Morgan said he did not know the measurements. Janvrin thought it was more than 50 feet. He asked Garand if this would help him make the determination as to whether that item should return to the Board. Garand said if it doesn't meet the Board's requirements, it would have to return to the Board; he takes direction from the Board.

Fraze said this paperwork is needed just to make it right at the records office. Garand said the Rockingham County Registry of Deeds would get the paperwork regardless, and just to make sure that the Planning Board files are accurate. Janvrin said with a commercial enterprise, an as-built is submitted for the files. They want the same thing for the homeowner. Garand reminded about the same situation at Dow's Lane about language for the convertible property; this was another headache. The Board needs to clarify what changes can be done to a condo. Kravitz said the Planning Board office needs consistency, which she was not hearing in terms of what to tell someone who comes to the office i.e. do they or don't they have to come to the Planning Board. If there are too many grey areas it is not clear how to help the applicant. Khan thought Garand's position was to let applicants come before the Board if they have a major change, and let the Board decide on the jurisdiction; this would take two minutes. Garand pointed out that Morgan had asked if a request for waiving jurisdiction had to notice the abutters. Janvrin asked if it would be an informal meeting. Garand said Morgan should clarify what comes before the Board, and asked about the fee for a condominium conversion. Morgan asked if the issue is not to surprise the abutters. Janvrin did not want to pull the trigger if there's no need. Garand said it would be nice to make it as easy and quick for the Planning Board; that's another issue. The Planning Board has been very busy; smaller items could be cleaned up internally, but the Board still had to look at things to make sure they are done appropriately.

Janvrin asked if Morgan had enough to start working on the regulation change, however, the person needs an answer soon because they'd like to start building. He asked if the Board would require this person to come to the Board, or not. Khan asked if Ganz was representing the developer. Ganz said she was. Khan said after all of this discussion, Ganz had fulfilled her obligation to the developer. The Planning Board heard about it and knew where the building would be, so he did not have any issues. Janvrin asked if for this, the Board would waive its jurisdiction, and get an as-built. Garand recommended allowing them to make their changes to



Town of Seabrook Planning Board Minutes

Tuesday, March 20, 2012
NOT OFFICIAL UNTIL APPROVED

the condominium property as long as they notify the Planning Board of the changes and meet the zoning criteria. That way they would not be holding anyone up with building permits. Garand said it's only a formality, and that Morgan had said a lot of communities don't do this at all. But with converting a condominium that is a duplex, there are issues of representing the services and utilities correctly on the plan; that's where departments want a review. In the particular situation the curb cuts are in and would remain the same. They are just reconfiguring them on the lot. As long as they are denoted properly and clearly on the plan, it would be an after-the-fact as-built.

Wood asked about notifying the abutters. Garand said that is where clarification is needed. Wood said the Board is talking about a requirement if the building is moved 50 feet. Janvrin asked if this was just commercial and industrial. Wood said if this is the direction, maybe they should at least notify the abutters that something is going on. There may not be an issue with any of the abutters, but what if there is an issue. Based on this discussion, Morgan understood that the Board wanted the abutters notified if a house would be moved 50 feet or more. Wood thought that is what was happening in the particular situation. Ganz said the only abutter that actually would be affected was actually the same owner; she offered to provide copies of the plans. Chase said this was another grey area. Janvrin asked Garand if he had enough information to make a decision as the CEO, and also asked if anyone had a problem with that. Khan asked if Garand agreed that the only abutter was the owner of the property; they were pushing the property further away from the other side. Janvrin had no objection, and asked if anyone did. Chase asked if a motion would be in order to waive jurisdiction. Janvrin said this was not even a case before the Board; guidance was given to the CEO.

Kravitz said that this type of action was very hard to track. That was one reason that expedited applications were adopted, so that the Board could track the decisions that it makes. Wood said that a decision was being made at this meeting not to have that person come to the Board, but there was no record. Garand said there would be no reference on the tax card, and no amendment. He thought Kravitz' point was that there was no application or minimal fee so that she could track it, like an expedited condominium application, so that there would be paperwork to track it and make a paper trail. Kravitz said by way of example, expedited applications are given a case number e.g. 2011-30E so the Board knew that it was expedited, and it could be found. When waivers are done out-of-hand, nothing comes in and there is no way to track it going out except for the small reference in the minutes. There is no place to put this in the files. Wood thought Kravitz was speaking about the particular project. Kravitz said it would apply to any project of this nature where an effort is being made to move things along that don't seem to need a major effort on the part of the Board. The question would be how to track it and find it in the future.

Ganz suggesting sending a letter on the old case, which could be put in the file with a copy of the plan. Janvrin said to put a copy of the minutes with it and asked if that would be satisfactory. Kravitz said if that is the direction that the Board is going; it would have to be a mandate whenever this type of situation comes up. Janvrin could not locate the old case number. Kravitz said this was not a case before the Board. It would be one thing if it had come in with a letter such as Ganz was describing, then the Board could track it and apply those minutes to it in the file on that one occasion. In this particular instance, the discussion is about something that did not come to the Board, and enabling similar situations. Janvrin thought the CEO was looking for a clarification. The Town Planner did not have an answer, and came to the Planning Board for a clarification and opinion. Garand said he was trying to get to the building permit. Fowler thought if it did not affect abutters, and the Board shouldn't have anything to do with it at all. Garand issues the permit, unless moving a building will affect an abutter. Janvrin did not see this on a



Town of Seabrook Planning Board Minutes

Tuesday, March 20, 2012
NOT OFFICIAL UNTIL APPROVED

drawing, and asked Ganz to send the Board a letter. Khan thought the Board should consider the particular situation. Morgan should bring in an overall recommendation as to the Board's options. Garand said at this point they will let the developer move forward, and address the regulations at a later date. Janvrin said at this meeting the Board made an interpretation. [Secretary's note - **The consensus was that this matter should come up at a later meeting which the Town Planner later designated for April 17, 2012.**

Janvrin asked for other business. Abramson said, generally, if there is any that comes up and is likely to bring people into the audience, that's something that the Board should address, but not if something is never going to bring anyone in.

Janvrin said that at the April 3, 2012 meeting the Board would be restructured as to the Chair, Vice Chair, and possible 2 alternates for a three year term. He asked the Board to keep this in mind and suggested that anyone interested in becoming an alternate should feel free to submit that request to the Planning Board office prior to the meeting. Abramson requested that anyone interested in serving as an alternate include their experience e.g. as developer, construction, or anything that would help the Board process. Kravitz said that a Board Member needed to be appointed to represent the Planning Board on the Recreation Commission. Janvrin said if someone wanted to volunteer to be appointed to the RecComm they should let the Secretary know before the next meeting.

Janvrin said that the Rockingham Planning Commission is looking for two alternates to be reappointed, of which he is one. Kravitz thought this also applied to one commissioner. Janvrin said the process is for the Planning Board to nominate someone, and the Selectmen make the appointment. He noted that Hawkins and Khan are now serving as commissioners. Abramson asked if a Planning Board member could go to the RPC meetings, or if it was necessary to be an alternate. Kravitz said that the meetings are open to anyone. Janvrin noted that Chase had gone to the meetings for a long time without being an alternate. Chase said he had been a member of the MPO.

Janvrin adjourned the meeting at 9:05 PM.

Respectfully submitted,

Barbara Kravitz, Secretary Planning Board