

**CITY OF KEENE  
NEW HAMPSHIRE**

**PLANNING BOARD  
MEETING MINUTES**

Monday, June 22, 2015

6:30 PM

Council Chambers

Members Present

Gary Spykman, Chairman  
Mayor Kendall Lane  
Douglas Barrett  
Andrew Bohannon  
Christine Weeks  
Nathaniel Stout  
George Hansel  
Tammy Adams

Staff

Rhett Lamb, Planning Director  
Michele Chalice, Planner

Members Not Present

Councilor James Duffy

**I. Call to order – Roll Call**

Chair Spykman called the meeting to order at 6:30 PM and a roll call was taken.

**II. Minutes of previous meeting – May 26, 2015**

A motion was made by Christine Weeks to accept the May 26, 2015 minutes. The motion was seconded by Douglas Barrett and was unanimously approved.

Mr. Hansel stated that he would need to leave the session at 7:20 pm.

**III. Membership**

1. Election of Vice Chair

Mayor Kendall Lane nominated Nathaniel Stout as Vice-Chair of the Planning Board. The motion was seconded by Douglas Barrett and was unanimously approved.

2. Election of Steering Committee

Mayor Kendall Lane nominated Douglas Barrett as a member of the Steering Committee. The motion was seconded by Andrew Bohannon and was unanimously approved.

**IV. Continued Public Hearing**

1. **SPR-218, Mod. 2 – Freihofer’s Bakery – 815 Court Street – Site Plan** –

Applicant Jim Phippard of Brickstone Land Use Consultants on behalf of owner 815 Court Street, LLC proposes a 4000sf addition to an existing retail building for Freihofer’s distribution center and retail bakery outlet. Waivers are requested from Standards #10: Lighting and #19: related to location of parking. The site is 2.39 acres in size and located in the Commerce Zoning District (TMP # 188-01-004).

B. Public Hearing

Mr. David Bergeron of Brickstone Land Use Consultants stated there were concerns with the layout and the proximity to the adjacent buildings which have some residences located in it. He indicated that the plans the Board has before it are a result of revisions that have been made. He explained that the previous plan had the truck dock for the large truck on the north side of the building with a pull up area that came close to the commercial/residential building. This has now been eliminated and the interior layout has been flipped and the dock is now on the opposite side which moves the dock about 150 feet from the adjacent building. Previously the pull up area was about 40 feet from the building and now the closest point the truck will get to would be about 90 feet.

Mr. Bergeron referred to a sound study document included in the Board's packet for tractor trailers done in California. Mr. Bergeron also referred to the future plan for the property to the north which he has also included in the applicant's plans. The current approval for that project has two buildings located about 20 feet from Court Street which will get noise not only from Court Street but also from vehicles accessing the applicant's site because they share a driveway. However, these buildings are about 250 feet from the proposed loading dock.

Mr. Bergeron went on to say that the next question that was raised was what the procedure was for these vehicles after they enter the site. He stated it is a company policy that no vehicles will idle at any time of the year. It could take about 45 minutes to unload the trucks and once they unload they will exit along the south end of the site farthest away from the residential buildings. To accommodate the exit, the parking lot was pulled further back which also changed the lighting layout. He referred to the three light poles that are going to be located on the site, the location of those have now changed. Originally the applicant had asked for a waiver for a reduced lighting plan but the applicant has decided to provide a reduced lighting plan. There will now be lighting during normal business hours but cut back after hours. The reduction will be on the pole lights but the wall packs on the building will remain on after hours.

The grading and retention areas also changed. To accommodate the truck dock there needed to be a truck well. Currently the roof drainage dumps to the ground but this is now going to be tied into an underground system into the retention basin. The drainage will still remain on site and there will be no increase to drainage off site.

Landscaping - three deciduous shade trees have been added to the western portion of the site as well as the crab apple tree which has been replaced with a shade tree.

Building elevation – Colors remain the same. The configuration has changed to accommodate the change in location to the truck dock at the rear.

As far noise was concerned, according to information the applicant has been able to obtain, the number at the property line runs between 58 and 62 decibels, and the number at the exterior of the residential building runs between 55 and 60 decibels, depending on the specific operation of the truck. Mr. Bergeron had contacted the builder of this building and this information has been included in the Board's report. This concluded Mr. Bergeron's presentation.

Ms. Weeks asked whether the entrance on the north side is one way. Mr. Bergeron answered in the negative and stated the reason for this is because there are cars that are going to be at the rear of the location and they would like them to be able to use it in both directions and it is difficult

for the truck to make the swing and exit the opposite way. Ms. Weeks asked about locating a stop sign on the corner. Mr. Bergeron stated that can be done.

Vice-Chair Stout asked if the trucks get off the site and head south on Court Street, whether they will be able to negotiate that exit. Mr. Bergeron stated this is a specific delivery for one location and most trucks will be coming from Albany, New York and will be using Maple Avenue and there will be no reason for them to head south. Vice-Chair Stout asked whether there could be some indication noted that these trucks cannot turn left at this location. Mr. Bergeron said that some sort of directional signage could be added.

Mr. Barrett stated he appreciates the revisions that were made and is glad Freihofer's has a no-idling policy and the redesign does eliminate the trucks from being about 40 feet from the closest residence. However, now the standard the Board is left to deal with is the property line standard which is the 70 decibels. Mr. Barrett stated that his concern is the trucks entering the site and when they are parallel to the housing which will at that point only be about 25 feet. Mr. Barrett asked whether the study Mr. Bergeron has for the Board took into account the reflection that would occur off the building as the truck passes by. Mr. Bergeron stated that he wasn't sure and added that he had looked at the City's noise ordinance and didn't see a number associated with it and wasn't sure where the 70 number comes from. He agreed that there might be a higher noise level at the location Mr. Barrett is referring to but noted there was not going to be any building located here.

Mr. Barrett referred to language from the study done in California which Mr. Bergeron had referred to and indicated that this study does not identify the types of truck except that they were semi-trucks from a previous study and asked that Mr. Bergeron help him connect the dots between the 2012 and 2013 freightliners and whether they are similar to what the applicant is proposing to use. Mr. Bergeron stated that he had tried to look into this information to see if he could find any sound information on that specific truck and if there was any correlation with the numbers of that truck to the numbers in the report and added that they were similar year but wasn't sure if the numbers were exactly the same.

Ms. Adams noted that she doesn't see any recommendation for sidewalks or for pedestrian access. Mr. Bergeron stated they had a sidewalk in front of their property going up to the driveway and noted that on the westerly corner there is a steep embankment but felt the driveway could be widened and an area could be striped for pedestrian access. Ms. Adams stated that she was more concerned about the people who live across the street in the apartment complex trying to access the bakery and the convenience store. She added that there is a sidewalk on the north side of Court Street and hoped that there would be some sort of walking pathway for pedestrian to come off Court Street and get onto the site. Mr. Bergeron stated they could add a striped area in the western corner of their property line but would not want to add any striping where there is no sidewalk.

Staff comments were next. Planning Director Rhett Lamb began by referring to an email from Chuck Choteau, Regional Sales Manager which email does state that most tractors are 2012-2013 freightliners. Mr. Lamb then referred to the question that was raised about the 70 dba sound level; Mr. Lamb stated there are two sources dealing with sound in the City, the first is Chapter 66-121 which is part of City Code. This is what is referenced by the Planning Board Regulations. There is also a section in Zoning, Chapter 102-951, paragraph 2 which refers to the 70 dba at the property line. This is a Zoning Standard and was the same standard used for the Key Collision application. Mr. Lamb added that the section this language comes from in the Zoning Ordinance

is called Division Six Site Use Impact, and in addition to noise it also addresses, smoke, fumes, odor, disruption of natural vegetation and drainage runoff.

Michele Chalice, Planner, referred to a document consisting of a table emailed to the Board and indicated that staff had asked that this table be refined. According to this table there is the possibility to exceed the 70 dba in all of those numbers. Mr. Lamb stated the question is where this noise should be measured and stated he would focus on the location where the tractor trailers at the back of the property and when backing into the loading dock and not at the closest location to the property line when a truck is driving through. He felt this was transitory and it won't be different than traffic driving by. Chair Spykman agreed that this is a nuanced issue; when does it stop being driving through and become maneuvering. Mr. Lamb stated any driveway close to a property line will exceed the noise standard if trucks were traveling through.

Ms. Weeks asked whether any consideration was given to trucks entering the site via the south side. Mr. Barrett noted the City's noise ordinance exempts backup alarms and asked whether the section of the Zoning Ordinance Mr. Lamb referred to also exempts such alarms. Mr. Lamb felt it would be reasonable to exempt back up alarm as the noise ordinance is very specific about that.

Chair Spykman stated that the issue for him is that the Board is dealing with a use that would not be allowed at all in this location and is being allowed only because of the variance they received from the Zoning Board. Mayor Lane stated that once the ZBA had granted the Variance this is the use the Board has to deal with and act upon the approval granted by the Zoning Board. This is now a permitted use in this zone regardless of what use going into the adjoining property.

Mr. Bergeron noted the residential use is also not a permitted use in this zone and a variance was granted to allow that use. He went on to say that the thought was mixing of uses on the lot was not necessarily a bad thing and gave it a more urban setting. With reference to Ms. Weeks' question about the truck entering through the south side, Mr. Bergeron stated the turning radius and the retaining wall is a deterrent for this access.

The Chair asked for public comment next.

Mr. Jim Phippard of Brickstone Land Use Consultants stated that these are the types of issues that are happening on a more frequent basis – mixed use development. However, there is always some type of conflict between residential and commercial that seems to be happening. He referred to a property he owns in the commerce zone on Winchester Street. He indicated he has never had a problem renting this property. He talked about the noise issue on Winchester Street and the lights from the adjoining car dealership but none of this has been an issue to rent this property. The reason his tenants have given him is they like this site, they prefer to live in a busy area rather than in a country setting.

Mr. Phippard felt the Board needs to recognize in a mixed use area these type of conflicts are going to happen but compromises can be made to move the noise away, use full cut off lighting but the people who live here like the convenience this area brings. However, if the Board thinks it's necessary he asked they consider what they did for Key Collision and conduct a compliance hearing. The applicant will pay for an engineer to conduct a study.

Mr. Phippard stated they had talked to Freihofer's who have other distribution centers in urban areas about how they make their sites work in a residential area. The first thing was not

permitting idling. They were also asked about changing their delivery times to after 6 am or before 11 pm. Freihofer's policy is to distribute their baked goods the day they are baked and on shelves within 24 hours. He indicated that if there was a compliance hearing and Freihofer's could not comply with the 70 decibels what the applicant would do is an "offset" which means Keene will receive their goods a day after they are baked and lose day of shelf life. A typical shelf life is seven days and a day is quite a significant time period for the applicant.

Mr. Phippard further stated that each driver is an independent vendor and by changing the delivery time, Freihofer's in the past has lost drivers. Mr. Phippard added that if the change had to be made, it can be done but it will be at a cost to the applicant and it will take about 60 days to make this change. With no further comment, the Chair closed the public hearing.

Ms. Weeks stated that as part of the motion she would like to add something about the stop sign as well as idling. Ms. Chalice stated that this is included in revised language. Mr. Lamb indicated that he does agree with Mr. Phippard in that we are creating a node in this part of the City, based on the Master Plan (neighborhood activity center). Based on this principle the City is encouraging mixed uses but what is before the Board today is not the kind of mixed use the Master Plan contemplated. As the Mayor indicated the mixed use that is before the Board today is something given to us by the Zoning Board. The types of mixed uses that are being encouraged are not warehouses next to residential facilities.

Mr. Phippard added that he also heard mention that the Board has the opportunity to determine whether the use being proposed is compliant with the noise ordinance and the zoning code and felt it was important for the Board to look at this before moving forward. Mr. Lamb pointed out that this warehousing variance runs with the land and any future warehousing activity may or may not need Board approval to move in. He asked the Board think about this in the long term. The Zoning Board has said the use is allowable but the Planning Board has its own standards. He added that he was agreeable to a compliance hearing.

The Mayor agreed with what Mr. Lamb stated and asked whether a compliance hearing could be structured upon any change of ownership or a different operation. Mr. Lamb stated that if there is no change of use the matter will not automatically come before the Planning Board. He added it certainly could be an extra level of protection but whether it could ultimately be enforceable is the question.

Mr. Hansel left the session at 7:25 pm.

Vice-Chair Stout referred to the noise ordinance section Mr. Lamb had previously referenced and asked whether the Board does not have a fall back on the noise ordinance regardless of a variance. Mr. Lamb agreed and added the variance grants the use and the Planning Board grants the site plan approval indicating how the property will be developed. He went on to say that he did not read the variance application in its entirety and hence wasn't sure if the hours of operation were part of the variance application. Vice-Chair Stout stated his point is regardless of a variance, unless it is stated in the variance that the noise ordinance could be superseded, it still applies. Mr. Lamb agreed and noted that the difficult issue is that these are estimates not exact measurements and it is also a mobile source, transient in nature and is not an easy question to answer at the site plan stage.

Mr. Barrett pointed out that the level the applicant is using is 69 decibels at 25 feet which might or might not be appropriate for these trucks. Mr. Barrett stated he had looked at the Federal

Highway Administration Traffic Model which is probably the most comprehensive data base. For a similar operation, a tractor trailer going 10 mph, the traffic noise model would have a sound level of 80 decibels at 25 feet not 69 decibels at 25 feet, which is 11 decibels louder and 10 decibel increase is generally considered to be doubling of loudness.

Mr. Barrett went on to say that the reason he asked about reflection is because there will be reflection when the truck passes the building, which might not make much of a difference perhaps only by about a decibel or so but the applicant's calculation is right on the threshold and one or two decibels might make a difference. He felt there is a strong likelihood they will exceed the 70 decibel level as they enter the facility. He stated he takes Mr. Lamb's comment that it is transient noise and should not be considered under advisement and we are not taking the backup alarm and for that operation they might be able to comply with the 70 decibel standard. Taking all this under consideration, Mr. Barrett stated he is likely to vote in favor of this application but is torn because by the strict letter of the zoning ordinance, the applicant is not likely to comply with that but other mitigating factors, such as the transient activity, residences located further away, windows being closed with AC units in them, should all be taken into consideration.

Mayor Lane stated his biggest concern last month was the idling of trucks which seemed to have been addressed both by company policy as well as the proposed motion. He added he wasn't sure what impact this operation would have on this neighborhood. The Mayor further noted that most ordinances in the City are complaint driven and this is what determines whether a violation has occurred. Here again if the noise exceeds 70 decibels at the property line and if there is a complaint, regardless of the operator of the facility, they will have to mitigate that noise. Chair Spykman asked whether there was a mechanism in place to enforce such a complaint. Mayor Lane stated that this is up to the Inspections Department. Mr. Lamb stated that Section 102-951 Paragraph 2 refers to 70 dba at the property line and if there was a complaint that is the standard that will be used.

Ms. Weeks felt there was great wisdom in continuing this item to this month because the applicant has now addressed the major concerns the Board had. One issue that was not discussed tonight is air pollution but this has been addressed by the company by not permitting idling. She further stated she appreciates the applicant moving the loading dock further away from the residences and hence is likely to vote in favor of this application.

Vice-Chair Stout stated the Board doesn't know if the next applicant will pay for a compliance hearing which this applicant has agreed to do.

Chair Spykman felt the Board has spent a lot of time talking about one aspect of this application, noise and would assume the Board is happy with the other issues of this plan. He stated he is happy with the changes the applicant has made to this plan. The question is to what extent the Board can ask for things like noise to be contained to one's own property and felt this is a debate the Board would need to have.

The Mayor agreed and said it should be discussed when they start drafting the land use code update. He noted the City has discussed the issue of neighborhood nodes for many years but once you get down to the specifics it becomes a philosophical debate.

#### C. Board Discussion and Action

A motion was made by Mayor Lane that the Planning Board approve SPR 218, Modification #2 and waiver of Standard 19 Parking, as shown on the plan entitled "Proposed 4000 Square Foot

Building Addition 815 Court Street” prepared by Thayer Fellows, PE, DB Architects and Brickstone Land Use Consultants, dated and received April 17, 2015, revised June 8, 2015. Tax Map 188-01-004, Keene, Cheshire County, NH, at various scales; with the following conditions:

1. Prior to signature, submittal of:
  - a. A security for landscaping and an “as-built” plan in a form and amount acceptable to the Planning Director and City Engineer.
  - b. A revised plan showing:
    - i. Installation of a stop sign for trucks leaving the site.
    - ii. Installation of “No Idling” signs at each loading/unloading door.
    - iii. The ground area surrounding the proposed shade tree on the proposed parking lot island to be landscape with some combination of plants, not an impermeable surface.

The motion was seconded by Andrew Bohannon.

Ms. Weeks asked whether there should be language about a compliance hearing. Mayor Lane stated this is optional and added if a compliance hearing was scheduled and the operation was not in compliance it would cause a great deal of disruption with their business operation. He further noted that a compliance hearing is a “one time deal” whereas if its complaint driven, this is forever. Ms. Weeks asked for staff’s recommendation on this issue. Mr. Lamb stated he agreed with the Mayor that this is a one-time measurement but the complaints about noise can go on for as long as the applicant is in operation at this location. Ms. Weeks stated she will take it as staff not seeing that a compliance hearing is necessary. Chair Spykman stated that if there is a problem with noise compliance, the location of the problem is likely to be at the side of the building near the parking lot on the adjacent lot. He said the housing that may get built on the adjacent lot will probably have more noise from Court Street than it will have from the once a day run from this property. He recommended waiting for complaints instead of a compliance hearing.

Vice-Chair Stout stated he would take the opposite position in that Freihofer’s has offered to pay for a compliance hearing and didn’t feel the City should give that opportunity up. Chair Spykman asked what happens if the compliance hearing shows the applicant is not in compliance and no-one ever complains and because of the compliance hearing the applicant now has to go through an entire process. Vice-Chair Stout agreed there should not be a compliance hearing if there are no complaints but did not want to give up the opportunity either. Ms. Adams stated that she does not recall anyone offering to pay for a compliance hearing. Chair Spykman stated that Mr. Phippard during his presentation had indicated that they will be paying for a consultant.

Mayor Lane asked whether language could be added that says if there are complaints then a compliance hearing will be conducted. Mr. Lamb suggested the Board open the public hearing and hear from the applicant’s representative on this issue.

Chair Spykman opened the public hearing and invited Mr. Bergeron to comment on this issue. Mr. Bergeron stated he would not like to leave this item open ended and would like to leave the timeframe to six months. Chair Spykman suggested 12 months giving time for all seasons and all conditions to have an effect. Ms. Weeks noted there are apartment buildings which have not yet been built. Mr. Bergeron stated these buildings might never get built or could be turned into a

commercial space. Chair Spykman stated the Board cannot hold up approval of an application because of unbuilt plans.

The Chairman closed the public hearing again.

Mayor Lane made an amended motion as follows:

A compliance hearing to determine as-built sound levels at the property line by an audio consultant paid by the applicant if a complaint is received within 12 months beginning operations. Should sound levels exceed the 70 dba, Freihofer's will adopt an offset delivery schedule for 7 am deliveries to the distribution center.

The amendment was seconded by Christine Weeks.

Chair Spykman reopened the public hearing.

Mr. Phippard stated his concern is depending on what the result of the complaint is; there might be some other mitigation other than the offset of the operation. He asked whether the motion could be amended to provide for appropriate mitigation.

Mayor Lane withdrew his amendment and Ms. Weeks withdrew her second.

Mayor Lane made a second amendment as follows:

A compliance hearing to determine as-built sound levels at the property line by an audio consultant to be paid by the applicant will be held if a complaint is received within 12 months of beginning operations. Should sound levels exceed the 70 dba, Freihofer's will adopt appropriate mitigation measures.

The second amendment was seconded by Christine Weeks and was unanimously approved.

The original motion made by Mayor Lane was also unanimously approved.

## V. Public Hearing

1. SPR-505, Mod. 1 – Fairfield's Cadillac Buick GMC – 434 Winchester Street – Site Plan – Applicant Brickstone Land Use Consultants, LLC on behalf of owner 434-440 Winchester, LLC proposes to renovate and expand the existing 10,886 sf building. The site is 3.01 acres in size and located in the Commerce Limited Zoning District (TMP# 911-24-008).

Vice-Chair Stout was recused from this application because Fairfield's is a member of the Association he works for, NH Automobile Dealer's Association.

### A. Board Determination of Completeness.

Planner Michele Chalice recommended to the Board that the Application SPR-505 was complete. A motion was made by Mayor Kendall Lane that the Board accept this application as complete. The motion was seconded by Christine Weeks and was unanimously approved.

### B. Public Hearing

Mr. Jim Phippard addressed the Board on behalf of the applicant. He referred to a plan and explained that this is a 3.1 acre lot, zoned commerce limited and located on the east side of



Winchester Street. There is an automobile use on the property and the existing property is non-conforming for several reasons. The original building was built in the 70's before the current zoning went into effect. The property was turned to Commerce Limited in the 90's. At that time the front setback became 100 feet and 20 feet on the other sides. Before that when it was the Industrial zone the setback was 20 feet on all sides. He added that the northwest corner projects into the 100 foot setback.

Mr. Phippard stated this property is a little different than other properties because when this subdivision that created these lots was enacted in the 80's there were rights of way that were created – 60 feet wide that runs from Winchester Street to Cornwall Drive and straddles this property line 25 feet to the north and 35 feet to the south. There is also a driveway that is shared by all the landowners owners with two curb cuts located to the east side of Winchester Street except for Keene Chrysler Plymouth. This was done for future access. Mr. Phippard noted this will be unaffected by the proposal before the Board today.

The proposal before the Board calls for a rebuilding of an existing facility which will let them add additional work bays at the rear of the facility, reconstruction of front showroom which will eliminate the portion that extends into the 100-foot setback, adding a second floor to a portion of the building for additional work space but still keep the footprint smaller. The reason for this is, this property is located in the 100-year floodplain. This property and the adjacent property will flood to elevation 471 and by rebuilding this site, flood proofing will be necessary at an elevation of 472 or higher. This will be done by installing flood panels on all openings in the building. The applicant still has to provide compensatory flood storage for placing an addition to accommodate the building addition. To accommodate for this, they are mitigating right beside this area which is a lot currently paved and is used for parking. The pavement will be removed, lowered about six inches and repaved. Mr. Phippard then talked about the building elevation. Today it is green corrugated metal building with a corrugated metal roof. The proposal is to treat all four sides in uniform manner. The new material will be aluminum composite which has high efficiency insulation. The glass in the front will be replaced with new insulated glass. The second floor would consist of windows facing Winchester Street. Mr. Phippard referred to the Winchester Street view on the left side where there is a proposed canopy which provides protection for customers from the elements. This canopy does protrude 12 feet into the right of way the City holds and requires Council approval to encroach into the City right of way with a temporary structure. He noted this is a temporary structure and will be taken down should the City ever construct a City street at this location. He added there is also a condition in place when this subdivision was created that all the parking to the rear of this site will be eliminated should a street ever be constructed here.

The landscaping is being revised; new foundation plants are being brought in to replace the overgrown junipers. Drainage is being reduced as no impermeable coverage is being added to the lot. The applicant is asking for a waiver from having to submit a formal drainage plan. There is a wetland on the property but no disturbance is being proposed for this wetland. Mr. Phippard then referred to the roof top units which are going to be behind a parapet wall and will be screened from the right of way. Access to these units for maintenance will be from the second floor. There is an exemption being requested for lighting because there is no change being proposed for the lighting. He indicated that each of the different entities in this subdivision has different lighting needs and car dealerships do require good lighting. The proposal is to revise the existing lighting so that they will be full cutoff LED fixtures and the applicant will come back with a revised lighting plan. Until that time the lighting that exists now will be maintained.

Chair Spykman stated he like the isometric view as an addition to the Board's packet. Mayor Lane asked to see samples of the architectural material. Mr. Phippard stated he didn't have any with him but explained that it will be aluminum composite, brushed finish not glossy. All metal doors will be painted to match the siding. The Chairman clarified that the siding will be white. Mr. Phippard answered in the affirmative.

Ms. Weeks referred to language about snow storage where it is stated the melted snow will drain to the vegetative land area and asked whether salt will be used. Mr. Phippard stated that sand and salt will be used for snow melting but if there is more snow than the site can handle it will be hauled away. He further stated the snow melt passes through a vegetative upland area before it enters the wetland area.

Ms. Weeks also noted under the heading of hazardous and toxic material it is indicated the owner has no knowledge of existing contamination on the site and asked whether this was sufficient for City standards. Mr. Phippard explained when Jack Dunn owned the dealership in the 1980's there was an underground tank which has since been removed but there was some leakage which is common and the gasoline has been cleaned up. There are monitoring wells on the property and no contaminants have been detected.

Ms. Weeks with reference to flooding asked whether the applicant is required to obtain a flood permit. Mr. Phippard stated that any activity within the floodplain requires a flood permit and a building permit won't be issued without same.

Staff comments were next. Ms. Chalice stated that this applicant has done a good job with a property that has a lots of property complications; rights of way, adjacent property, and easements. Ms. Chalice called the Board's attention to the Surface Water Ordinance. She explained that the applicant did mention the wetlands buffer off the jurisdictional wetland. There is particular section in the ordinance that permits the construction of a compensatory food storage excavation which would violate this buffer under City Code Chapter 54 as long as no part of the compensatory flood storage excavation is within the wetland. She noted that this is violating the 30-foot setback but not the wetland itself.

Ms. Chalice further stated it is encouraging to see the applicant flood proofing the entire building to the minimum elevation of 472. Ms. Weeks asked whether Ms. Chalice has any concerns about the use of salt for snow removal in the wetlands. Ms. Chalice stated this is always a concern but the City has no regulation with reference to this issue but there is regulation that indicates you are not allowed to dump snow directly into a wetland area but the City has no setback requirement for snow storage.

Mr. Bohannon clarified if a road goes in the applicant would lose the parking that exists at this location. Chair Spykman agreed this is what the applicant had indicated and asked whether this would mean they might be at risk at some point of not having sufficient parking. Ms. Chalice stated the required spaces for this lot is 39 spaces and the applicant currently has 49 spaces. Mr. Phippard noted if you take into account the display spaces they have about 175 spaces on the site and 39 are required by zoning. He further noted staff had characterized the compensatory flood storage encroaching into the setback area as a violation of the setback and added that it is allowed under the ordinance and felt the word violation was incorrect. Ms. Chalice clarified what she wanted to emphasize is that we are permitting the construction of compensatory storage.

The Chair asked for public comment. With no public comment, the Chair closed the public hearing.

Mayor Lane stated he was impressed with this proposal. He indicated he was involved in the layout of this subdivision 40 years ago and represented Fairfields and other owners of this property and is aware of the challenges this property presents. He stated he is gratified of the solution the applicant has found which is agreeable to the other tenants. The Chair agreed with the Mayor and added he looks forward to this new façade on an expanded building.

C. Board Discussion and Action

A motion was made by Mayor Kendall Lane that the Planning Board grant SPR-505 Modification #1, as shown on the plan entitled “PROPOSED BUILDING EXPANSION, FAIRFIELD’S CADILLAC, BUICK, GMC”, Tax Map #: 911-24-008, 434-440 Winchester Street, Keene, Cheshire County, NH, dated May 15, 2015, last revised May 28, 2015 with sheets # C1-C5, drawn by Brickstone Land Use Consultants at a scale of 1” = 30’; with the following conditions:

1. The following actions are needed prior to signature by the Planning Board Chair:
  - a. Owner’s signature on plan.
  - b. An approved license from Keene City Council “to infringe 12’ into a 60’ right of way easement for Cornwall Drive”.
  - c. Submittal of a completed Floodplain Permit.
2. Prior to signature, submittal security for landscaping and an “as-built” plan in a form and amount acceptable to the Planning Director and City Engineer.

The motion was seconded by Andrew Bohannon and was unanimously approved.

2. **S-03-15 – 383/0 Chapman Road – Boundary Line Adjustment** – Applicant Brickstone Land Use Consultants, LLC on behalf of owners Chapman Road Holdings, LLC and The Chapman Road Farm, LLC propose to adjust the boundary line between 383 and 0 Chapman Road. The combined lots total 73.39 acres in size and located in the Rural Zoning District (TMP #s 902-21-11 and 902-21-011.01). ZBA approval of 9/2/14.

Vice-Chair Stout rejoined the Board.

A. Public Hearing

Mr. Bergeron stated there are two properties involved in this application. He referred to the Chapman Farms LLC property which is about 77 acres in size and the Chapman Holdings property which is about 1.99 acres in size. The Chapman Farm property has a house in the center of the lot and has frontage along Chapman Road. The 1.99acre lot is a vacant lot and there was a variance recently granted for construction on this 1.99 acre lot.

What the boundary line adjustment is proposing to do is to shift the 1.99 acre lot and swap land between the two lots. The smaller lot will now become a two-acre lot. Mr. Bergeron noted there is a house site available in the center and there is also a good location for a septic system and a well on the lot. Mr. Bergeron went on to say that he was originally told by the Inspections Department that shifting of the lot will not have any effect on the variance but this discussion is continuing.

Staff comments were next. Mr. Lamb indicated since the staff report was written there has been conversation that has happened with the Zoning Administrator, the City Attorney and the applicant's attorney with reference to the variance. There is a consensus that the lot before the Board today is not the same lot that was granted a variance. He indicated based on these conversations, staff is recommending tabling this item until the July meeting. It is still unclear whether this item needs to go back to the Zoning Board. The applicant's attorney is in agreement with this recommendation. He added that the Board take public comment and then table the matter until the July meeting. He noted that his concern is that this is a different project than was presented at the Zoning Board. The Boundary Line Adjustment is not a public hearing but abutters do get a letter of notice to the public hearing and the statute does not obligate the Board to take public comment which does change the nature of the appeal process. There is a legitimate question as to whether this item needs to go back to the Zoning Board for their consideration.

Mayor Lane asked whether this property was a boundary line adjustment or a new subdivision. Mr. Lamb stated that staff's first thought was that it was a subdivision but it is technically not a subdivision because there were two lots at the beginning of the process and there will be two after the approval, no new lots are being created. The difference is the location of the lot is changing by about 135 feet to the north. This is not a typical boundary line adjustment which would be swapping of equal amounts of land between two existing lots or adjusting of boundary lines.

Chair Spykman indicated that the Board has no obligation to hear from the public, but is open to hearing from the public.

Mr. Carl Jacobs of 376 Chapman Road addressed the Board first. Mr. Jacobs stated that he has lived in his property since 1973 and at that time the Dick Allard owned these lots and Mr. Allard always thought there could be development of his property. Mr. Jacobs stated the Mr. Allard used these lots to gain access to the larger lot. He noted this is not the same property as when the Allards owned it and the proposal is all about the 77 acres being subdividable. Mr. Jacobs pointed out the ordinance does require a loop back to the road if you are going beyond 700 feet and stated he wanted this on the record. He further stated that it is not about just moving lots but it is also about opening up the 77 acres. He stated there might not be a plan for a subdivision at this time but if this proposal does get approved the chance of a subdivision is more likely to happen. He stressed this is not what was approved by the Zoning Board.

Mr. Greg Blanchette of 399 Chapman Road was the next speaker. Mr. Blanchette stated that his family has lived in this neighborhood since 1971. Mr. Blanchette stated his purpose for attending today meeting was to learn what the motivation for the change is; why the owner in the rear would go to the trouble of exchanging properties and indicated that for most people present today this is the concern. Mr. Blanchette stated this is a scenic road with a lot of undisturbed land.

Mr. Bergeron responded to the comments by saying that the owner of Chapman Farm is doing this out of good will and has no other proposal for the property. He is not the applicant. Mr. Bergeron stated that moving the lot up the hill gives him a better view of Mount Monadnock. He further stated that there are no new lots being created, additional traffic is not being added and noted that this owner can obtain a building permit if the boundary line adjustment is not done because he does have Zoning Board approval.

Ms. Weeks stated that she is confused about what was approved on September 2, 2014 by the Zoning Board. Chair Spykman explained it is the ability to build on a lot which would normally have to be five acres in this zone. The property before the Board is 1.99 acres in size. Mr. Bergeron added most communities, allow buildings on existing non-conforming lots but Keene does not have that provision. This is where the requirement for the variance comes in. Ms. Weeks asked whether this property is part of the Farm. Mr. Bergeron stated that at one time it might have been.

Mr. Jacobs stated he is a member of the PLD Committee, and the PLD Committee conducts joint meetings with the Planning Board. He noted there was a recent discussion about a property in the rural zone and what the Joint Committee was reminded is that regardless of what the motivation of the applicant is, the Committee needs to be mindful what the change would make possible and noted this change does open up some possibilities for a subdivision.

B. Board Discussion and Action

A motion was made by Christine Weeks that the Planning Board continue this item to the July 27, 2015. The motion was seconded by Andrew Bohannon and was unanimously approved.

3. S-02-15 – 391 Old Walpole Road – Subdivision – Applicant Wendy Pelletier, PLLC, on behalf of owner David Williams, proposes the subdivision of an existing 2.78 acre lot, which is in the Rural Zoning District. The two lots after adjustment would be 1.29 and 1.16 acres (TMP# 919-07-028). ZBA approval of 6/1/15.

A. Public Hearing

Surveyor, Wendy Pelletier addressed the Board on behalf of David Williams. Ms. Pelletier stated the applicant has received ZBA approval to subdivide an already non-conforming lot. There is already an existing dwelling on one of these lots as well as a garage for a construction business. The proposal is to convert the garage into a residence. Ms. Pelletier added that they had to go back before the Zoning Board for a second time, when it was brought to her attention that they had not taken into account the surface water and they went back for an amendment to change the lot size. She added that what they have is an existing dwelling with an existing driveway and the garage will be turned into a residence which will have a new driveway via the existing gravel access.

Staff comments were next. Chair Spykman referred to an error in the Staff Report – there is reference to Old Walpole Road and Hurricane Road. Mr. Lamb agreed that under the heading Background it should say Old Walpole Road. He referred to comments from Engineering dealing with culverts, verifying the driveway width at the street, not allowing drainage into the city right of way, not block gutter flow and requiring permits from Public Works for any excavation in the roadway and finally request for an address. He noted that these are standard requirements. The analysis staff provided is a recommendation for approval with the requirements from Engineering Division. The use of an undersized lot to be subdivided was approved by the Zoning Board of Adjustment. The question before the Board is whether the frontage serves as adequate access from the public right of way to the buildable portion of the lot. Ms. Chalice noted the plan needs to be updated to show the recent ZBA approval date.

Chair Spykman asked what the blue area on the plan was. Ms. Pelletier stated that it was a wetland area. The Chair asked how close the building area is to this wetland and asked whether it meets the Board's setback requirement. Mr. Lamb stated that in a rural zone the setback is 75 feet and this proposal does not meet that requirement. However, it is an existing condition and no

new construction is being proposed. The Surface Water Ordinance applies to construction of driveways, roads, culverts and buildings and does not apply to a subdivision only to the degree you can't count the area of wetland in the lot size. In this case, the lots are smaller than previously anticipated because the wetland area has been subtracted from the total buildable area. With reference to the setback requirement, if the owner planned on modifying the building in any substantial way where a building permit is required, the Surface Water Ordinance will apply.

Ms. Weeks asked if a garage was being converted to a house whether a building permit would be required. Mr. Lamb stated the answer would be yes but wanted to be sure what the details of the construction would be but as it relates to the Surface Water Ordinance, the footprint of the building is not going to change. Ms. Weeks asked whether the grey driveway shown on the plan is existing or is something being proposed. Ms. Pelletier referred to an existing paved driveway and an existing gravel driveway which is being proposed as the new entrance with a new curb cut. Ms. Pelletier added that they have applied for a driveway permit. There is the 50 feet of required frontage for a driveway in a rural zone.

Chair Spykman noted that this is an under sized lot which is being divided further into two more under-sized lots, which he felt was regrettable but the ZBA saw fit to approve it.

The Chair asked for public comment next. With no comments from the public, the Chair closed public hearing.

**B. Board Discussion and Action**

A motion was made by Mayor Kendall Lane that the Planning Board approve S-03-15 – 383, as shown on the plan identified as “2-Lot Subdivision, Map 162-01-004,” dated August 28, 2013 and revised October 17, 2013, prepared by Wendy Pelletier, Surveyor, at a scale of 1” = 40’ with the following conditions:

1. Prior to signature by Planning Board Chair, a revised, proposed subdivision plan showing:
  - A. The information or a note on the plan pertaining to the request by the Engineering Department:
    - Minimum 15” culvert required for driveway at ditch line at street
    - Verify proposed driveway width at street and at parcel line; no drainage is to be allowed from driveway onto street right of way.
    - Driveway is not to block gutter flow in street.
    - Excavation at street will require City Council approval upon approval of subdivision
    - An issuance of address must be requested from engineering division of Public Works department.
  - B. A revised ZBA meeting/approval date shown on the plan.

The motion was seconded by Andrew Bohannon and was unanimously approved.

**VI. Driveway Permit**

1. **0 Summit Road** – Owner C&S Wholesale Grocers, Inc. proposes two new curb cuts that will service a new bus stop and provide a one-way bus turn-around north of the YMCA driveway and adjacent to the YMCA property. The site is 21.1 acres and located in the Corporate Park and Low Density Zoning Districts (TMP# 918-10-013.02).

Vice-Chair Stout was recused from this application as he was a member of the Governing Board of the YMCA.

Mr. Rob Hitchcock of SVE Associates was the next speaker. Mr. Hitchcock referred to a plan and explained where the following are located: YMCA property line, YMCA driveway, C&S property and Summit Road. Mr. Hitchcock stated the variance they obtained from the Zoning Board of adjustment is to locate a bus stop which is not an allowed use in this zone without a primary use.

Mr. Hitchcock explained to the Board the route the City Express would be taking. In the past people were dropped off near Kristen's Bakery and they had to walk past the four-way intersection and this was difficult for people who were physically challenged. Mr. Hitchcock indicated that Susan Ashworth of the City Bus Express and the Director of the YMCA were present tonight.

Staff has no additional comments. Ms. Chalice added that they were appreciative that this proposal brings about a better access to the YMCA.

Mayor Lane stated he would take offense to what is stated in the staff report in that there are no sidewalks in this location and that this drive will not disrupt pedestrian walkways. The Mayor stated that when C&S was permitted access via Summit Road it was widened specifically for pedestrians and bicycles. As a person who runs this route three times a week, he can say that there is much pedestrian and bicycle activity on this road and this proposal will disrupt that. He indicated that before his votes in favor of this request, he would like to know what accommodations are being made for that and also noted that this route was part of the trail system and there is a grant to perform some upgrade to the trail system.

Mr. Lamb in response stated he agrees with the Mayor that there was widening of Summit Road that happened to the east side of Summit Road. The question is whether this is compromised in any way. He noted there is a sidewalk that goes to the YMCA but what is before the Board goes quite a few feet past that. Mayor Lane noted the widened road has disappeared and people are now walking on the opposite side of the road.

Ms. Weeks asked how many times the bus will use this route. Mr. Hitchcock stated it will be eight times a day, during daylight hours and agreed that he has seen people walk this route but didn't see much conflict happening.

Mr. Bohannon asked whether there is a requirement for distance between a driveway access and a turnaround access. Mr. Hitchcock stated that this distance is similar to the distance from the YMCA driveway to Stone House Lane and felt it would have been bad idea to have it any closer. He added there is no engineering number for this distance. He referred to where the bus shelter location is going to be and the distance was based on that.

Ms. Weeks asked whether this bus stop will replace the stop in front of Kristen's. Susan Ashworth with the City Express stated there will be a bus going by Kristin's so that residents who live in Parkwood Apartments could access the bus as well.

Mr. Lamb with reference to what the Mayor had said, indicated the width of the pavement was pretty significant because this was a former state route. Mayor Lane noted that the width of the

right of way is significant but the pavement was greatly reduced because water and sewer lines were installed for Blackbrook Industrial Park.

Mr. Bohannon asked who would be responsible for the sidewalk maintenance of the sidewalk near the bus stop. Mr. Hitchcock stated it will be the responsibility of the YMCA. He added that the bus stop is on C&S property and if C&S decides to develop this area, the bus stop will be removed

A motion was made by Mayor Kendall Lane that the Planning Board approve a driveway permit for 0 Summit Road, as seen on the plan titled "BUS STOP, KEENE FAMILY YMCA" prepared by SVE Associates at a scale of 1" = 60', dated October 17, 2014 with following condition:

1) Driveway design shall not direct stormwater flow nor disrupt existing drainage in the city right of way on Summit Road.

The motion was seconded by Andrew Bohannon and carried on a 5-1 vote, with Mayor Lane voting in opposition.

Vice-Chair Stout rejoined the Board.

**VII. Planning Director Reports**

None

**VIII. Upcoming dates of interest – July 2015**

Planning Board Meeting – Monday, July 27, 6:30 PM

Planning Board Steering Committee – Wednesday, July 15, 4:30 PM

Joint PB/PLD – Monday, July 13, 6:30 PM

Planning Board Site Visits – TBD

On a unanimous vote, the meeting adjourned at 9:10 PM.

Respectfully submitted,

Krishni Pahl  
Minute Taker

Reviewed by: Rhett Lamb, Planning Director  
Edits, Lee Langella