

**CITY OF KEENE
NEW HAMPSHIRE**

**PLANNING BOARD
MEETING MINUTES**

Monday, January 28, 2019

6:30 PM

Council Chambers

Members Present

Douglas Barrett, Chairman
Chris Cusack, Vice-Chair
Michael Burke
Martha Landry
Councilor George Hansel
Mayor Kendall Lane
Pamela Russell Slack
Gary Spykman
Andrew Weglinski

Staff:

Rhett Lamb, ACM/Community
Development Dir.
Mari Brunner, Acting Planner

I. Call to order – Roll Call

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

II. Elections

Mayor Lane nominated Douglas Barrett as Chairman, Chris Cusack as Vice-Chairman and Pamela Russell Slack as At-Large member of the Steering Committee. The motion was seconded by Councilor George Hansel and was unanimously approved.

Chair Barrett thanked Gary Spykman for his service on the Board.

III. Minutes of previous meeting – December 18, 2018 Planning Board Meeting Minutes

A motion was made by Mayor Kendall Lane to accept the December 18, 2018 meeting minutes. The motion was seconded by Councilor George Hansel and was unanimously approved.

III. Continued Public Hearing

1. SPR-08-16 Mod. 1 – 31 Washington Street and 41 Spring St – Site Plan –

Owner/Applicant Washington Park of Keene, LLC proposes site-related modifications including alterations to the grading, landscaping, retaining wall, and sidewalk in the northeast area of the parcel as well as the installation of a concrete pad and generator to the east of the multi-unit apartment building. Other proposed modifications include the elimination of a concrete walkway to the south of the apartment building, relocation of a dumpster pad, and installation of an outdoor patio in front of the building adjacent to Washington St. The site is 4.94 acres in size and located in the Central Business District (TMP#s 569-056-000-000-000, 569-055-000-000-000).

A. Public Hearing

Mr. Tony Marcotte of Washington Park addressed the Board and introduced Robert Baskerville of Bedford Design Consultants. He stated the applicant has made various revisions to the plan

since the last time it was before the Board. He referred to the plan and noted the changes that have been made based on the concerns raised by the abutters.

Referring to the northeast corner of the parcel, Mr. Marcotte stated that they added a one foot tall Versa-Lok wall with 1500 lb blocks in order to re-grade the slope in this area to a less than a 4:1 slope. This has allowed them to add two cherry trees and the applicant is retaining the Boston Ivy in this area. A yard drain will be added to catch the water coming off the dumpster pad and they will raise the grade at the driveway entrance to prevent water runoff onto the abutter's property on Spring Street. The generator pad has been moved to be further away from the abutter's property and closer to the apartment building.

The generator would have a sound proof cover so when it is exercised once a week it would be at 59 decibels. When it is running on a normal frequency for the purpose of running hallway and stairway lights, the sound level would be 66 decibels. Dead River Company will be able to deliver propane fuel to the generator. In response to a concern raised about the removal of two trees from the parking lot island, the applicant is proposing to add two cherry trees to a different island in the parking lot.

Mr. Marcotte continued describing the changes and explained that they added asphalt curbing along the boundary with the Moco Arts property. He confirmed that the grading in this area will allow water to drain to the catch basin in front of the former Middle School building. Behind the apartment building on top of the four foot retaining wall, the site will be graded so that water is directed to the bioretention area. This concluded Mr. Marcotte's testimony.

Mayor Lane stated his concern is the exhaust from the generator entering the apartments next door and asked how this was going to be prevented. Mr. Marcotte stated according to Code the generator has to be 15 feet from a building opening and because this generator is run on propane, the fumes get dissipated quickly. There is also a superintendent who will monitor the running of the generator and noted it is more of a residential size generator.

The Mayor further stated when they were at the site visit in November it was noted the asphalt curbing had already been torn out by plow trucks and raised concern about using asphalt in the area adjacent to Moco Arts and asked how this is going to be maintained. Mr. Marcotte stated the curbing that was torn out was installed when the weather was too cold and it did not set properly; however, the curbing that was installed in the summer has lasted. He added they have already discussed the manner in which this area should be plowed and no snow will be directed towards the MoCo property.

Chair Barrett asked how long the generator would need to run when it is exercised. Mr. Marcotte stated it would need to run for about five to ten minutes and added the owner does not like to exercise the generator unless it is necessary; he is not a proponent of running it often so it is likely to be exercised quite rarely. Mr. Marcotte confirmed the generator would be exercised during the day time.

Staff comments were next. Acting Planner Mari Brunner addressed the Board and stated staff received the most recent, revised plan on January 25th. She noted the major changes are the addition of the two trees in the parking lot (southern island closer to the building), the generator pad being moved to be closer to the apartment building, the addition of a yard drain close to the dumpster, and the addition of curbing along the property boundary with Moco Arts. As a

condition of approval staff is requesting a construction detail for this curbing. There is also going to be a 1.5 foot Redi Rock (applicant referred to this as versa lock) wall at the foot of the slope to create less than a 4:1 slope to allow them to plant a row of Upright Boxwood, two cherry trees, and to retain the Boston Ivy.

Ms. Brunner stated engineering staff had a concern about the Versa-Lok wall which was installed during construction and subsequently buried. The City Engineer would like an opportunity to inspect this wall once it's exposed and would like to know the specific product that was installed; this is listed as a condition of approval in the recommended motion from staff.

Mr. Spykman referred to the Addendum and noted many of the numbered items have questions and asked if the applicant has addressed these items to the satisfaction of staff. Ms. Brunner said that many of the concerns and comments raised by staff in the staff report have been addressed; staff met with the applicant last week after the Board's packet went out to go over the revised plan. Anything that is still outstanding could be included as conditions of approval.

Ms. Landry asked whether staff has a copy of the motion being proposed for the Board's review. Ms. Brunner stated staff just met with the applicant this past Friday and she has a motion for the Board to review. The suggested conditions of approval include:

- Submittal of a construction detail for the curbing along the Moco Arts boundary (gravel behind the curb for stabilization, no vertical lip, striping in front of the curb).
- Information about the specific product used for the Versa-Lok wall.
- Prior to issuance of a certificate of occupancy, city engineer to verify that sedimentation issues have been addressed.
- Coordinate with Public Works to inspect the Versa-Lok wall to make sure it is structurally sound and make the necessary improvements.

There are still conditions of approval from 2016 the applicant has not yet met; these will remain in place.

Mr. Lamb noted the conditions Ms. Brunner describes pertaining to the wall, fixes any issues the engineer might observe. The Mayor asked who constructed the wall. Mr. Lamb stated it was constructed by the applicant; it was supposed to be a Redi-Rock wall but they installed Versa-Lok instead.

Ms. Landry referred to language in the staff report (Engineering comment #10) and asked if the language should say "designer's letter should be stamped," or "shall be stamped". Ms. Brunner stated the City Engineer asked that the letter be stamped by a licensed engineer. The applicant did comply with this request; however the stamped letter was not received until after the packet went out. Mr. Lamb noted the request for an engineer's stamp was made because staff wanted to confirm that the Versa-Lok wall was installed according the manufacturer requirements. The stamp is a request, not a requirement.

Dr. Cusack asked about the grading between this site and Moco Arts, and whether water would pond. Ms. Brunner stated that while this area is relatively flat, overall it does grade down and will serve to keep water off Moco Arts and this has been confirmed by the City Engineer.

With no further comments from staff, the Chairman asked for public comment. Mr. Bob Beauregard of 47 Spring Street addressed the Board and stated his property immediately abuts

the northeast corner of this site. He noted a generator will generate noise and questioned how they will get a propane hose to the back of the site with the trees in the way.

Mr. Beauregard referred to the northeast corner of this site and stated the proposed wall is only going to come part way and won't go the entire length of the property – the Redi-Rock wall which is buried only goes to the corner of building. He added the major incident with the last storm had water running under his tool shed and pushed dirt against the shed and stated any more slippage and the tool shed will get moved. Mr. Beauregard stated the solutions being proposed are for the spring but he needs something done now; neither his property nor his neighbors' properties can take any more water. At this point Mr. Beauregard stated he is asking for the Board's help. He would like to go back to what was approved by this Board in 2016 where there were two retaining walls; the lower one should go the entire length of the slope to Spring Street.

Mr. Bill Beauregard was the next speaker who stated his property abuts the subject property immediately to the north and to the east; 28-30 Roxbury Court. Mr. Beauregard stated he is exceedingly concerned about the placement of the generator which is only 35 feet from his property. He is concerned that noise will echo off the four story building and affect his tenants. He noted in prior meetings, the applicant had indicated they will not be exercising the generator but anyone who owns a generator knows they have to be exercised and this would affect the abutters. He asked why the generator could not be on the opposite side where it would not affect abutters who live on Roxbury Court.

Mr. Beauregard referred to the rear of the site which has iced over and so far he has burnt out two sump pumps since this construction began (one burnt out and flooded his boiler at a \$1,000 cost for repair). He indicated how storm water is going to be handled is a concern to him.

Mr. Beauregard stated in addition to the noise with the drop down to his property the fumes are going to settle into his property. Mr. Beauregard questioned where this is going to be codified; if the Board approves a generator it could be a small one today but a large diesel generator in the future. He felt some of these things need to be memorialized so that future Boards and Code Enforcement could look at what was approved.

He went on to say with the many violations that have occurred with this application what assurance do abutters have that after a certificate of occupancy is issued that what is approved will actually happen.

With no further comments the Chairman closed the public hearing.

Mr. Burke stated he has not been on this Board for too long but there have been a few large projects that he has seen come before the Board where the Board seems to be finding out about changes after the fact. He does not feel any abutter should have to deal with the consequences of someone else's project. He felt if the wall has to go all the way to Spring Street then that is what needs to happen and asked why the generator was not planned to go in one of the islands in the parking lot.

Mr. Spykman stated he agrees with Mr. Burke and stated all of these things indicate an attitude of the applicant not being a good neighbor and just doing the barest minimum. He stated it is very disturbing to him that the Board is being put in a bad position. He likes the idea of asking for temporary drainage control.

Mayor Lane stated during the November meeting he raised concerns about three things: lack of trees in the parking lot to reduce the massing of the parking lot, drainage, and the placement of the generator. He stated he is pleased the applicant has dealt with the trees and that they have also addressed the drainage which, while not the greatest solution, is serviceable. He stressed the need to address a temporary drainage measure in the meantime. He stated he is not happy about the placement of the generator and the lack of responsiveness to same. The Mayor stated he has a difficult time voting for this application unless the generator is located where there will be less impact on the neighbors.

Ms. Russell Slack asked where the generator was supposed to have been located. Mr. Lamb stated it was added during the modification which was submitted in November 2018. Ms. Russell Slack stated she is going to have a hard time supporting this application with the generator where it is being proposed. She further stated she would like to see something done immediately to mitigate the drainage issue that is going on now.

The Chairman reopened the public hearing to hear from staff. Mr. Lamb stated staff has been working with the applicant quite a bit on issues such as erosion, water leaving the property, etc.

Referring to the driveway on Spring Street, Mr. Lamb refreshed the Board's memory about this curb cut when it was used by the school district. He noted when the construction project started the existing asphalt berm was leveled and lowered. The existing berm helped water flow down Spring Street away from Mr. Beauregard's property. However, due to the manner in which the applicant graded this site, water from Spring Street entered the applicant's site, added to the flow at the dumpster pad location, and exited the site onto Spring Street; without a curb line, this water then entered the property at 47 Spring Street and flowed in the manner Mr. Beauregard described.

Staff suggested adding a temporary berm with pavement or something similar to keep the flow of water in Spring Street. However, this was never done and more curbing was added for the sidewalk which exasperated the issue. Mr. Lamb stated this is something staff has been working on with the applicant and added there seems to be a good solution being discussed today for the permanent problem but wasn't sure what the solution for the temporary problem is. The asphalt berm cannot be added anymore and the only temporary solution would be to sand bag that curb and close it off so it cannot be used during construction. However, there will be an issue when this area needs to be plowed. Mr. Lamb went on to say staff has been trying to work with the applicant, staff has threatened to close the project down and fine the applicant because of site plan violations, however, the issues have not been solved and added the issues at the south end of the site have been addressed with the installation of gutters and down spouts.

Mr. Marcotte responded by saying last time he was before the Board, the generator was against the property line but now it has been moved against the building but because of the concerns raised he will remove it from behind the building. He went on to say the only area where there has been significant changes made without first seeking approval is the slope behind the apartment building. He stated he made several attempts to have the contractor install an asphalt berm at the entry to Spring Street. When this was not done, Mr. Marcotte added sand bags and bark mulch to this area. At this time, this entrance is going to be closed off so tractor trailer trucks will have to gain access via Central Square and enter the site through Roxbury Street.

Sand bags have also been added to the top of the retaining wall where water entered the Beauregard property and Mr. Marcotte stated he would extend this through the entire length of the wall.

With respect to the Moco Arts issue, they had agreed to keep it as is but the applicant has agreed to add curbing here. Mr. Marcotte noted that the abutter created the problem by lowering the grade at the property line, which this applicant is correcting.

With response to being fined, Mr. Marcotte stated they have been very responsive to staff requests but there was one day he could not place sand bags when requested due to a family emergency. He further stated they also attempted to keep a screen of vegetation at the rear of the site. Once trees were trimmed for construction purposes the larger trees were removed; trees are being added back in. He noted when spring arrives an asphalt berm will be placed.

Mr. Lamb stated staff does not have a specific requirement for granite curbing or some other alternative to asphalt but did ask for a design which could withstand a plow truck. Staff is also asking the asphalt curb to be lowered so a plow doesn't catch it. The other request is to add fill behind the curb so the curb will not be dislocated. He noted if the asphalt fails the city would undoubtedly here from the abutter.

Mr. Bill Beauregard asked that the changes being proposed be added to a plan the Board can review at a future public hearing. He noted the city has a stipulation for granite curbing and felt Spring Street should have granite curbing as well. He added sand bags are not a permanent solution and referred to the slope that has been created, which is in violation of the site plan and added there are no plants contrary to what the applicant just stated.

Mr. Bob Beauregard stated he would like to address the transformer which he failed to mention previously. He stated this transformer is not 100% online yet but the deafening hum this pad produces is going to make it impossible for them to open their windows. He reiterated the issue with the runoff onto his property.

The Chairman closed the public hearing again.

Mr. Spykman asked whether a list of conditions is the way the Board should proceed with this matter. The Mayor asked staff whether there was an issue with deadline with respect to this application. Mr. Lamb stated the application is at the 65 day decision deadline today but the parties can mutually agree to extend this deadline.

Mr. Lamb felt it would be worthwhile for the Board to put on the record the motion outlined by staff which has new conditions regarding the erosion issue as discussed today. The other issues outlined in the motion relate to the slope, addition of the low wall, and plantings. The only other thing he heard differently tonight is extending the wall to the end of Spring Street – Mr. Lamb did not feel this was necessary as the areas where the walls are being built are areas that have already been modified. North of where the existing wall stops today is undisturbed.

Chair Barrett clarified that should the Board approve this application with the conditions outlined they could be immediately enforceable. However, should the applicant come back with a revised plan, there will be no additional enforcement action. Mr. Lamb answered in the affirmative.

Councilor Hansel asked how this plan going to be any different should the Board wait until next month and stated he would entertain a motion.

Mr. Spykman stated he would like to be assured these conditions would require the applicant to submit to staff a revised plan for staff review and approval. Mr. Lamb stated this does add some weight to the enforcement issue and the applicant is aware how the Board feels about the existing issues. He did add the applicant has made an effort but unfortunately there doesn't seem to be an easy solution to some of these issues.

Ms. Landry asked whether staff is comfortable the motion captures the outstanding issues. Mr. Lamb stated it does – with respect to the Moco Arts issue there is a solution staff is comfortable with, however, the Board cannot require granite curbing on a private property. With respect to Mr. Beauregard's property, on the northeast side, there seems to be solution there as well with a planted slope. The city engineer will make sure the wall is sound and will sign off on same.

C. Board Discussion and Action

A motion was made by Mayor Kendall Lane that the Planning Board approve SPR-08-16 Modification #1, as shown on the revised plan sheets 3, 5, 9, SKC-1, and SKC-2 for the plan set entitled "Proposed Residential Multifamily Housing and Change of Use, Washington Park, 17 Washington Street, Keene, New Hampshire" prepared by Bedford Design Consultants on April 6, 2016 and last revised on January 25, 2019 at varying scales with the following conditions:

1. Prior to signature by Planning Board Chair:

- A. Owner's signature appears on the plan.
- B. Submittal of a construction detail for the proposed asphalt curb along the southern parcel boundary, subject to the approval of the City Engineer.
- C. Submittal of the manufacturer specifications for the specific product that was used for the installed Versa-Lok® wall.
- D. Submittal of a revised site plan to show the removal of the emergency generator.
- E. Submittal of a temporary erosion control plan, including temporary closure of the curb cut on Spring Street with drainage control, to keep the flow of water in Spring Street.

2. Prior to issuance of a Certificate of Occupancy:

- A. The applicant will coordinate and comply with the City Engineer on requirements to address sedimentation and siltation issues that occurred during construction. This shall include impacts that occurred off-site on public property as well as impacts that occurred on site.
- B. The Applicant will coordinate with the Public Works Department to conduct an inspection of the installed Versa-Lok® wall, and will make any necessary repairs to the wall as determined by the City Engineer.

The original conditions of approval for this project as detailed in the Planning Board decision letter dated September 28, 2016 shall remain in full force and effect.

The motion was seconded by Councilor George Hansel.

Mr. Weglinski asked whether the inspection by the city engineer would include the roof drain system. Mr. Lamb stated it would include all the on-site systems.

The motion made by the Mayor was unanimously approved.

V. **Extension Request**

1. **SPR-11-17 – Water / Grove Streets – Commercial Parking Lot – Extension –**

Owner/Applicant Jeanette Wright requests a second extension to the deadline to meet the conditions of approval for SPR-11-17. The site is located at 0 Grove Street (TMP# 585-057-000-000-000) in the Residential Preservation District.

Ms. Wendy Pelletier of Cardinal Surveying and Jeanette Wright the owner addressed the Board. Ms. Pelletier stated the owner is asking for a second extension on this project as the project has gone way over budget because of the landscaping and additional items the Board required; the owner is going to need time to raise funds to complete the work. She noted the requested security deposit is equal to the cost of the project.

Mayor Lane noted this would be the second extension granted for this project and asked for clarification on requirements regarding extension that exceed the second request. Ms. Brunner stated an applicant could request up to three extensions. However, with the third extension the applicant must show extenuating circumstances surrounding this request.

Mr. Spykman asked whether there is a timetable as to when the Board can expect this project to happen. Ms. Wright stated the plan was to start in the spring and unfortunately this is not the best time to start a construction project. Ms. Wright stated she was surprised at the amount of security deposit the city expected (\$4,000), which equals the project cost.

Mr. Lamb explained the security deposit for a project is based on items such as erosion control landscaping, and public utilities. For this project the only secured item is the landscaping and the number comes from what it would cost to install the landscaping.

Ms. Landry asked whether the security must be in cash. Mr. Lamb stated cash is deposited in an interest bearing account for the applicant – the city will also accept letters of credit. Ms. Landry asked Ms. Wright whether either one of these items could be something she could obtain. Ms. Wright stated she was not aware of the option to submit a letter of credit and was willing to look into it.

A motion was made by Mayor Kendall Lane to extend the deadline for SPR-11-17 by six months to allow the applicant time to meet the conditions of approval. The motion was seconded by Pamela Russell Slack and was unanimously approved.

VI. **Community Development Director Report**

Mr. Lamb stated the Board has a document which is a survey from the Southwest Region Planning Commission entitled “Age Friendly Planning” and asked for the Board’s consideration. Ms. Russell Slack hoped this is something the Commission would make public to the rest of the community.

Mr. Lamb stated Ms. Brunner had introduced herself as Acting Planner – with Michele

Chalice's resignation and Tara Kessler's FMLA leave, Ms. Brunner has had to take on extra work for the department. There is progress being made to fill the vacant planner position.

VII. New Business

None

VII. Upcoming Dates of Interest – February 2019

Planning Board Meeting – February 25, 6:30 PM

Planning Board Steering Committee – February 12, 11:00 AM

Joint PB/PLD Committee – February 11, 6:30 PM

Planning Board Site Visits – February 20, 8:00 AM – To Be Confirmed

The meeting adjourned at 8:15 pm.

Respectfully submitted,

Krishni Pahl
Minute Taker

Reviewed and edited by Mari Brunner, Acting Planner