

City of Keene
New Hampshire

PLANNING BOARD
MEETING MINUTES

Monday, February 26, 2024

6:30 PM

**Council Chambers,
City Hall**

Members Present:

Harold Farrington, Chair
Roberta Mastrogiovanni, Vice Chair
Armando Rangel
Ryan Clancy
Kenneth Kost

Staff Present:

Jesse Rounds Community Development
Director
Evan Clements, Planner
Megan Fortson, Planning Technician

Members Not Present:

Mayor Jay V. Kahn
Sarah Vezzani
Councilor Michael Remy
Randyn Markelon, Alternate
Gail Somers, Alternate
Tammy Adams, Alternate
Michael Hoefler, Alternate

I) Call to Order: Roll Call

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

II) Minutes of Previous Meeting – January 22, 2024

Chair Farrington offered the following corrections:

Line 54 – delete the word “that”

Line 82 – replace the word “this” with the words “the third”

Lines 193 and 194 – delete the words “was” and add the words “and”

Line 754 – correct the word “abutter”

A motion was made by Roberta Mastrogiovanni that the Planning Board approve the January 22, 2024 meeting minutes as amended. The motion was seconded by Kenneth Kost and was unanimously approved.

III) Final Vote on Conditional Approvals

The Chair stated that as a matter of practice, the Board will now issue a final vote on all conditionally approved plans after all of the conditions precedent have been met. This final vote will be the final approval and will start the 30-day appeal clock. He asked whether there were any applications that were ready for a final vote.

Mr. Clements stated that there are two applications ready for final approval this evening. The first one is SPR 02-22 Modification #1, which was a site plan modification for Aroma Joe's at 348 West Street. Applicant, Brickstone Land Use Consultants, on behalf of owners West Street AJ's LLC and A&B LLC have proposed a boundary line adjustment that would transfer ~0.022 acres of land from the Granite State Car wash site at 364 West Street to the Aroma Joes site at 384 West Street. Modifications to the layout of the existing queuing area on the Aroma Joe's site were also included as part of this application. All precedent conditions of approval for this application have been met and staff recommends the board issue final approval.

A motion was made by Roberta Mastrogiovanni that the Planning Board issue final site plan approval for SPR 02-22, Modification #1. The motion was seconded by Mr. Kost and carried on a unanimous vote.

Mr. Clements stated that the second application ready for final approval is SPR 03-19 Modification #3, which was a site plan modification for the construction of a new building on the Keene Mini Storage site at 678 Marlboro Road. Applicant SVE Associates, on behalf of owner Keene Mini Storage LLC, proposed to construct a ~5,200 square foot climate-controlled storage building on the property. Parcel is ~9.5 acres in size and it is located in the Industrial District. All precedent conditions of approval for this application have been met and staff recommends the board issue final approval.

A motion was made by Roberta Mastrogiovanni that the Planning Board issue final site plan approval for SPR 03-19, Modification #3. The motion was seconded by Kenneth Kost and carried on a unanimous vote.

IV) Extension Request

1. **S-08-23 – Subdivision – Markem, 150 Congress St – Applicant and owner Markem Corporation, requests a first extension to the deadline to achieve active and substantial development for the subdivision application, S-08-23, for the subdivision of the parcel at 150 Congress St (TMP #598-002-000) into two lots and the removal of pavement and portions of an existing tunnel structure. The parcel is 31 ac and is located in the Industrial Park District.**

Mr. Mike Gokey, representing Markem, addressed the Board and stated that they have experienced several delays with this project, most notably the removal of the tunnel that connects the two buildings. He explained that their fiber optic lines run through this tunnel and they have had some issues working with Consolidated Communications and Eversource to get these issues resolved. In addition to this, there is another section of the pavement to the west of the tunnel which that still needs to be removed.

A motion was made by Roberta Mastrogiovanni that the Planning Board grant a 180-day extension to the timeframe to satisfy the precedent conditions of approval for the subdivision application, S-08-23. The motion was seconded by Kenneth Kost and was unanimously approved.

V) **Continued Public Hearing**

- 1. PB-2024-01 – Surface Water Protection Conditional Use Permit – 186 Gunn Rd - Applicants and owners Ashley & Peter Greene request a reduction in the Surface Water Protection buffer from 75’ to 30’ to allow for the future subdivision and development of the parcel at 186 Gunn Rd (TMP #205-013-000). The parcel is 11 ac and is located in the Rural District.**

Mr. Clements stated the Board heard this application in January, but due to inclement weather, the Conservation Commission was not able to go out and walk the site. As a result of this, the public hearing was continued to this meeting. He stated that the Conservation Commission has had an opportunity to visit the site and make a recommendation, as is required by the Conditional Use Permit standards. The Vice Chair of the Commission has since submitted a letter to the Board. Mr. Clements then read the letter into the record.

Andrew Madison, Vice Chair of the Keene Conservation Commission and City Councilor from Ward 3: *For the members of the Planning Board, the Conservation Commission conducted a site visit at 186 Gunn Road on Tuesday, February 13th. The Commission then discussed the application, PB-2024-01, at the property owners’ request, to reduce the surface water protection buffer during our February 20th meeting. The two votes in favor and five votes against [the proposal means that] the Commission did not pass a recommendation that the surface water buffer be reduced from 75 feet to 30 feet.*

The Commission expressed concerns regarding the presence of wildlife noted during the site visit, specifically the abundance of hemlock and presence of deer scat suggested that this land may be an important area for white tailed deer and that wetlands present in the subject area are likely to be an important habitat for amphibians, such as the spotted salamander. The subject area is also identified as a supporting landscape in the New Hampshire Fish and Game Department’s 2020 Wildlife Action Plan, identifying it within the top 50% of its habitat type, including hemlock, hardwood, pine forest, and marsh shrub. The Commission is also concerned about the potential for flooding and the loss of stormwater storage.

Specifically, the Commission is concerned that the driveway associated with this project may exacerbate impacts from heavy precipitation events. The steep asphalt driveway in that location will likely provide a conduit for fast moving runoff. This could have a negative effect on water quality and cause increased flooding and erosion risk downstream. The Commission reminds the Planning Board that heavy precipitation events are becoming more common and more severe as a result of climate change.

Furthermore, the Commission is concerned with the effectiveness of the proposed infiltration trenches and septic leach fields. Test pits dug at the site indicate bedrock at a depth of 29 to 49

inches with unconsolidated till present at depths of 20 inches or less. Although these are well drained soils, they may develop seasonally high water tables that may inhibit infiltration from septic leach fields or the stormwater infiltration trenches. Moreover, stormwater infiltration trenches are at a risk of siltation that could result in a failure of the drainage system if it is not regularly maintained.

In addition to this, the Conservation Commission wishes to be cautious about setting a precedent for development within the surface water protection buffer. Although zoning changes in the Rural District have the potential to alleviate the region's housing crisis, it is appropriate that development be balanced with the needs of flood mitigation and the protection of our delicate local ecosystems. The Conservation Commission would like to acknowledge and express its appreciation for the property owners' willingness to meet with us, facilitate a site visit, as well as their efforts to address our concerns.

In the event that the Planning Board approves this application, the Conservation Commission requests that the applicant be required to implement the mitigation actions recommended by their consultant, including the installation of infiltration trenches around dwellings and native plantings along the driveway. We also request that the applicant be required to implement best management practices, including erosion control measures. Finally, the Conservation Commission recommends that a percolation test be performed during winter and spring to evaluate soil drainage during wet months. Respectfully submitted.

Mr. Clements stated that in preparation for tonight's meeting, he reviewed the Board's January minutes and there are four areas in which the Board did not get responses from the applicant:

The first is related to the standard that, *"the proposed use and activity cannot be located in a manner to avoid encroachment into the surface water protection overlay district."* He noted that during the discussion of this application in January, general comments were made by the property owner that the proposed location is the only suitable building site and noted that the entire property has not been surveyed. In addition to this, it was noted that a wetland delineation of the entire 11 acres has not yet been conducted. He added comments indicating that this is the only viable site in staff's opinion are not sufficient, especially when some of the concerns raised by the property owner for why other locations are not suitable were related to existing easements on the property for Public Service of New Hampshire and their personal views of their property and the surrounding area. Mr. Clements indicated staff would recommend that the Board discuss this issue further to attempt to get more information about the best location for development on this site.

The second standard that he recommended discussing states that, *"The encroachment into the buffer area has been minimized to the maximum extent possible, including reasonable modification of the scale or design of the proposed use."* Mr. Clements stated that when the application was initially submitted, the consultant had indicated that there was only going to be buffer impact from the reduced buffer for the driveway. In further discussion with the consultant, it was revealed that there is proposed to be over 10,000 square feet of buffer impact, including impacts to the buffer for both site development and the siting of a house. He noted that the site

plan that was submitted to the Board does not depict that additional buffer impact. Mr. Clements recommended the Board request an updated site plan showing the additional buffer impact.

The third standard mentioned by Mr. Clements states that, “*The nature, design, siting and scale of the proposed use and characteristics of the site, including but not limited to topography, soils, vegetation, and habitat are such that when taken as a whole, will avoid the potential for adverse impacts to the surface water resource.*” Mr. Clements stated the proposed house site is a shelf on the side of a hill and is very small. The proposed driveway with the infiltration trenches places this development at the edge of the wetlands. Given these two factors, there is no room for any outdoor utility. He indicated that staff has concern about the potential for slow encroachment into the buffer just through the use of the property over time. He added that because of the location of this property, enforcement to ensure that this does not occur will be difficult.

The final standard that he wanted to bring to the attention of the Board states that, “*The intent of the wetland buffer reduction is to provide flexibility for a parcel that is encumbered by the buffer.*” Mr. Clements noted it is not really designed to be an option to create a non-viable parcel and make it viable. He added that the language for buffer reduction requests is specific and uses the term “extraordinary.” It refers to extraordinary mitigation, including the replication and restoration of the wetland resource. He asked that the Board deliberate if whether they feel this application is proposing “extraordinary” mitigation. This concluded staff comments.

The Chairman asked for the applicant’s comments next. Ms. Ashley Greene, one of the property owners, addressed the Board and stated that she and her husband were discouraged by the outcome of the Conservation Commission’s decision. She stated they were hopeful when several members spoke in favor of the project and encouraged by the compliments they provided to the consultant regarding his mitigation plan. She also stated that she felt they were able to address the remaining areas of concern with the extra mitigation provided for the driveway and approval received from the City Engineer. She noted that the Surface Water Protection standards exempt new driveways from the buffer zone and felt the development of those additional plans was a gesture of good faith.

Mrs. Greene went on to say that another committee member of the Conservation Commission questioned how effective the septic system would be 100 years from now. The consultant, in response to that concern, had stated that annual maintenance would alleviate any potential issues. She added that they were also discouraged when the conversation turned away from their application to what might happen to the lot in the future. There was another committee member who kept reiterating that this application could be precedent-setting. She stated they appreciate the work of the Conservation Commission, but felt that no amount of mitigation could have overcome the Commission’s discomfort with the Surface Water Protection CUP standards. She added that the care they have put into this application and the high standards they have tried to meet should be a high precedent they have set. She hoped the Board feels this application has met what the standards require from them. She hoped that they won’t be penalized for being the first to utilize this new regulation, which could not only benefit them, but also help another family to create a home.

Mr. Jason Bolduc of Meridian Land Surveying addressed the Board next. Mr. Bolduc stated that he did complete a wetlands delineation of the entire parcel; however, the focus of the application was just on this section of the parcel because this is the area the property owners are hoping to develop. He added that it would cost a lot more to survey the entire parcel as opposed to the two acres that have currently been surveyed.

With reference to potential impacts to the wetlands buffer, he noted this is clearly depicted on the plan that was submitted. With respect to mitigation, nothing more has been added; however, the driveway design was approved by the engineer. As far as restoration of the wetlands, there is no impact proposed to the wetlands, so this would not be necessary. Ms. Greene noted that one of the things that makes Gunn Road so beautiful is that the area behind the road to the north is over a mile of woods that is undeveloped. The area being developed is a very small portion of this entire area.

Mr. Bolduc pointed out that the Wildlife Action Plan shows that this area does not fall into the category of being the highest ranked type of habitat; however, the area across the street and the areas up the hill and behind the stream are considered to be high ranking wildlife habitat areas. This concluded the applicant's comments.

Mr. Kost stated he appreciates that the applicants want to develop their property, but the City has excellent Planning Staff who provide advice to the Board. He asked whether there were any other options to relocate this home anywhere else on this 11-acre site. Mr. Bolduc stated they have not surveyed the rest of the area of the parcel yet. Ms. Greene stated they chose this location because it is far removed from their home and would have privacy both for them and the prospective owners. The area where the pole barn is currently located was looked at, but this location would be more problematic with reference to potential impacts to the wetlands. The other possible site that was suggested is west of their home, which would provide less privacy to their family. This location has two rights-of-way and is used by the public. If this was the only potential location they are left with, then they would choose not to move forward with the subdivision.

Chair Farrington clarified whether the reduced buffer in the original application was only for the driveway because staff had indicated that in order to develop the site and construct the house, there would be additional impacts on the buffer. Mr. Bolduc agreed there would be about 7,500 sf of impact. The Chair asked whether this additional impact was documented for staff and Board review. Mr. Bolduc stated it is shown on the plan that was submitted on December 14, 2023 and is noted as a total buffer impact of 10,870 square feet.

Mr. Clements stated his concern is that the applicant is indicating there will be 7,500 sf of additional impacts to the buffer and noted that they are proposing to install spruce trees at the very edge of the buffer. He explained that you can see the spruce trees not interacting well with the proposed use of the site, given that they are on the edge of where the site is proposed to be developed. He questioned how in that case the spruce trees be located on the edge of the buffer if the property owners would need to infringe into the buffer to make room for the development. Mr. Bolduc stated that there is the 75 foot setback, and then there is the proposed 30 foot setback. The spruce trees would be on the edge of the 30 feet setback.

Mr. Clements clarified that the applicant is asking for two things: a buffer reduction from 75 feet to 30 feet and an additional encroachment into the new 30 foot buffer for the driveway. Mr. Clements added that this would be a new driveway for a new lot and, therefore, will not be exempt from the surface water protection buffer requirements. Ms. Greene stated someone from the Conservation Commission had indicated that they understood new driveways to be exempt from this requirement. Mr. Clements stated this would be for an existing lot that predated the adoption of the Surface Water Protection Ordinance. For these undeveloped lots, new driveways are exempt from the surface water requirements. Because this is going to be a new lot it is not exempt, which is why they need the conditional use permit for both the buffer reduction and the driveway's encroachment into the buffer. Mr. Bolduc stated that the building, well, and leech field are all beyond the 30' buffer, but the proposed driveway is closer to the buffer on both sides.

Ms. Mastrogiovanni stated that Planning Staff do a thorough job of making sure the Board has a clear picture of all items that come before them. She indicated this plan might work for the applicant, but her concern is for the future development on Gunn Road. She added there is already a lot of runoff from Gunn Road and indicated that she lives on East Surry Road and noted they get a lot of runoff from Gunn Road all the way down to the golf course. She agreed Keene needs more housing, but it has to be done with careful planning.

The Chair asked for public comment. A member of the public asked whether the applicant plans to address those mitigation recommendations offered by the Conservation Commission if the Planning Board was going to approve the plan. Ms. Greene stated they are open to any conditions built into the plan. One of the applicant's solutions was to perform annual maintenance of the swales that run along the driveway and any other conditions the Board may propose. Mr. Bolduc stated his suggestion would be to outline conditions of approval to be reviewed by staff before a building permit is issued.

With no further public comment, the Chair closed the public hearing.

Mr. Clements indicated when staff and the Planning Board decided to reduce the minimum lot size in the Rural District from 5 acres to 2 acres, a large part of the discussion was that there are existing regulations in place that would protect the environmental resources of the community, and so this Surface Water Protection Overlay is that in action. He encourages the members of the Board to seriously consider this issue as they deliberate on the merits of this application as it is presented.

Mr. Rangel asked if this item was continued to the next Planning Board meeting, what other information the Board would need from the applicant in order to make a decision. Chair Farrington noted staff had outlined certain items they would be looking for.

Mr. Clancy stated one of staff's concerns is that if this plan is approved, the current and future landowners could break the law by unintentionally encroaching into the surface water buffer. He noted that he felt both City Staff and the Board should not assume this will happen. In terms of the Conservation Commission's letter, there was a reference to the environment and animals

around the area. He asked whether deer scat and hemlocks are a concern when approving these types of applications and asked whether hemlock was a rare tree species. Mr. Clements stated he did not believe a wildlife and endangered species analysis has been conducted on this property, and the Board has the right to ask for one if they think it is appropriate.

Mr. Clancy further inquired as to how big the zones are in this area that are referred to in the New Hampshire Fish & Game Department's Wildlife Action Plan. Mr. Clements stated that if Mr. Clancy was referring to the entirety of the Gunn Road area, he does not have that information. Mr. Clancy clarified that this concern could come up in any proposed development in the Rural District. Mr. Clements stated the Conservation Commission is asked to weigh in, because this application requires a Surface Water Protection Conditional Use Permit (CUP). For a proposed development in the Rural District that does not require a Surface Water CUP, the Conservation Commission would not be asked to weigh in.

Mr. Clancy stated it is indicated that there are two members of the Commission who voted in favor of the application and asked why those two members voted in favor of this application. Mr. Clements stated that the draft minutes of the meeting were just released, but noted that he has not had the opportunity to review them yet. Mr. Clancy referred to the concerns about runoff and noted this property is sloped away from Gunn Road and clarified that any runoff would continue onto the applicant's property. Mr. Clements stated it would continue into the existing surface water resource and if left unmitigated, would ultimately damage that resource.

Chair Farrington asked whether the steep driveway slopes up to Gunn Road. Mr. Clements stated it is sloped away from Gunn Road and noted that it is at the limit of what is allowed by the Board's regulations. It has areas of 15% slope, drops down to 11% and is designed as a descending driveway sloping away from Gunn Road.

Mr. Kost stated he understands what the owner said about not locating the potential build area anywhere else on the site where it will infringe on their privacy. However, on the other hand, locating the house in the currently proposed location will infringe on environmental regulations. He felt there could be options to develop the property while still mitigating some of the personal concerns and avoiding any potential impacts to the surface water buffer

Ms. Mastrogiovanni stated she agrees with Mr. Kost and added that the Board does have to consider staff's recommendations and protect the greater good of the City. She indicated she understands privacy is important, but it is also important to protect the environment on Gunn Road.

Mr. Rangel stated the concerns raised are considerable and he agrees that there needs to be a balance. He felt that there might not be a way to do that in in this case.

Mr. Clancy noted that in addition to the concerns raised by the Conservation Commission, they also provided some recommendations if the Board decides to approve this application. He felt the Board might not have another applicant who comes before them who would be so willing to work with them. Mr. Clancy felt instead of looking at this application as a precedent, they should instead look at it as a pilot. He noted this area already has a lot of conservation land that is not

likely going to be developed. Mr. Clancy felt this could be an opportunity to balance the housing needs of the City and while still protecting conservation land.

Mr. Kost referred to the recommendations offered by the Conservation Commission and questioned if those recommendations would solve the issues that are being identified.

Chair Farrington stated he did not feel that he had the expertise the Conservation Commission has and would defer to them regarding their concerns: wildlife habitat, potential for flooding, and the effectiveness of the proposed infiltration trenches and septic. He indicated these conditions are addressed to a certain degree and if this item was continued to next month, the Board and the Commission would like to see more attention paid to those items.

Mr. Clements explained that the word "*precedent*" can be challenging when it comes to land use deliberations. The Board's decision does not set precedent for future applications, as each situation is unique. He stated that he would encourage the Board to discuss the buffer reduction request and whether or not the mitigation measures proposed fit the definition of "*extraordinary*" measures. If the Board decides tonight that the spruce trees meet the test of extraordinary measures, then they may find future decisions to be challenging if a future development scenario requires further mitigation measures than the application before them tonight. While this does not set precedent on any specific item, the body of work around buffer reduction and extraordinary measures will eventually set an expectation.

Mr. Kost stated if the applicant is encroaching into the buffer, but then a line of trees are installed, then he does not understand how that is not considered encroaching on the buffer. He felt more clarity should be required in the letter from the Conservation Commission, otherwise a decision should be made today.

Mr. Clements stated that if the Board is deciding to either deny or continue this application, then they should clearly articulate to the applicant what they are looking for, so that the applicant can come back in March and hopefully prove to the Board that this is the only location that is viable for development. This will give the applicant to demonstrate to the Board that they meet the test of extraordinary measures for mitigation enough to warrant the proposed buffer reduction. He stated staff's recommendation would be to continue this item to the March meeting to give the applicant another chance to provide that additional information, while also giving the Board more time to read the Conservation Commission minutes before making a final decision.

Chair Farrington stated his personal opinion would be that if there are other suitable locations for development from the Board's perspective, but the applicants do not want to agree to that location, then that would be the applicant's prerogative. He did not feel it was the Board's prerogative to look at the rest of the property to choose another location.

Mr. Kost stated that for him, the questions are more for the Conservation Commission to clarify the meaning behind the last paragraph of the letter to provide a higher level of comfort to the Board when making a decision. The Chair asked whether it would be appropriate for the Planning Board to ask the Commission what they perceive to be extraordinary mitigation for wetlands. Mr. Clements stated that the Surface Water CUP is under the Planning Board's

purview and they are ultimately the deciding Body. The decision should be based on what the Board believes meets that test.

He advised that the Board needs to indicate to the applicant whether their proposed mitigation does or does not meet the threshold for extraordinary mitigation. Proving that there is no other viable location on the property to develop is part of the Surface Water CUP regulations. The applicant has to prove that they have to encroach into the buffer because there is no other suitable location that meet the regulations. Mr. Clancy noted that if this property was already subdivided whether this would be the only viable location for development and asked for staff clarification. Mr. Clements stated the Board could not approve a subdivision for this two acre lot under the current zoning ordinance; it is not buildable without the buffer reduction.

Chair Farrington stated he would need to understand more why the applicant considers the spruce trees to be enough extraordinary mitigation to protect the wetlands at the 30 foot level. Mr. Bolduc stated his intent for that proposal was for soil stabilization. Hemlocks are the main tree species present on the property, but are not an endangered species. He explained that they are proposing to install the trees for soil stabilization and to act as a natural indicator of where the edge of the usable land is for this proposed lot. He felt it would be unnecessary to put up a fence or any kind of permanent structure. He added the reason he chose spruce is because of the already prevalent hemlock, which tend to thrive in more acidic soils and spruces typically grow in more acidic soils as well. Mr. Bolduc went on to say that in regards to concerns about runoff it will be directed off the back of the leech field because this area is going to be lawn.

Mr. Clancy stated he would not mind adding the recommendations of the Conservation Commission as conditions of approval. Mr. Bolduc stated he glanced over the minutes of the Conservation Commission meeting and did notice they had concerns regarding the drywells collecting silt. Mr. Bolduc stated he looks at these similarly to what a City would have to do with catch basins. They would need to be cleaned out every spring and this would be his recommendation for the applicant. In addition to this, he would recommend that the septic be pumped out every three years.

Ms. Greene stated they were willing to work with the Board and asked if because they are the first applicant if there was anyone from the City they could work with to provide them with some guidance on this issue. Mr. Bolduc stated he would look at the intent of the buffer and that is to protect the wetlands from siltation and erosion. He explained that the intent of the plan they submitted is geared towards that. He also added that the septic is designed to state standards to protect the wetlands.

A motion was made by Roberta Mastrogiovanni that the Planning Board continue the public hearing for PB-2024-01 to the March 25, 2024 meeting at 6:30 pm in the Council Chambers 2nd floor of City Hall. The Board would request that the applicant be required to implement the mitigation actions recommended by their consultant, including the installation of infiltration trenches around the dwellings and native plantings along the driveway. The Board also requested that the applicant be required to implement best management practices, including erosion control measures and finally, the Conservation Commission had recommended that percolation test be

performed during winter and spring to evaluate soil drainage and any other recommendations staff has presented.

Mr. Kost stated there was a request for a definition of the term “extraordinary”.

Mr. Bolduc questioned the requirement for completing a percolation test in the winter and noted the end of winter is coming fairly soon. He stated he would like to see a more defined timeline for those types of requirements. Mr. Bolduc went on to say that when he does test pits, he is looking for the seasonal high water table with read off features that are persistent throughout the year. He noted that he is not necessarily looking for water in the test pit. He stated he was happy to reopen the test pits, but noted that no water was noticed and they went down to 30 and 50 inches, and the water table was called out of 22 and 27 inches.

The motion was seconded by Kenneth Kost and was unanimously approved.

VI) Public Hearings

1. **SPR-01-13, Modification #3 – Site Plan – Cheshire County Shooting Sports Education Foundation, 19 Ferry Brook Rd - Applicant SVE Associates, on behalf of owner the Cheshire County Shooting Sports Education Foundation, proposes several site modifications, including the relocation of the previously approved stormwater management system, on the property at 19 Ferry Brook Rd (TMP #214-021-000). The parcel is 55 ac and is located in the Rural District.**

A. Board Determination of Completeness

Planning Technician, Megan Forston, stated that the Applicant has requested exemptions from submitting a landscaping plan, lighting plan, elevations, a traffic analysis, soil analysis, historic evaluation, screening analysis, and architectural and visual appearance analysis. After reviewing each request, staff recommend that the Board grant the requested exemptions and accept the application as “complete.”

The Chair stated he is a member of this organization and would like to recuse himself. Community Development Director, Jesse Rounds, stated that if the Chairman was to be recused, the Board will not be able to render a decision tonight, but noted that the applicant could request a continuance and Chair Farrington could participate in this procedural vote.

A motion was made by Roberta Mastrogiovanni to continue the site plan application, SPR-01-13 Modification #3, for the Cheshire County Shooting Sports Education Foundation, 19 Ferry Brook Road to the March 25, 2024 Planning Board meeting at 6:30 pm in the Council Chambers on the 2nd Floor of City Hall. The motion was seconded by Kenneth Kost and was unanimously approved.

2. **SPR-04-21, Modification #3 – Site Plan – Hundred Nights, 122 Water St - Applicant BCM Environmental & Land Law PLLC, on behalf of owners the Hundred Nights Foundation Inc, the Railroad Street Condominium Association, and the City of**

Keene, proposes to install 1 of 70 security lighting around the perimeter of the Hundred Nights site at 122 Water St (TMP #585-027-000). Waivers are requested from Section 20.7.3.C & Section 20.7.3.F.1.c of the LDC regarding light trespass onto the adjacent properties at 0 Water St & 0 Cypress St (TMP#s 574-041-000 & 585-026-000) and lighting hours of operation. The Hundred Nights site is 0.62 ac and is located in the Downtown Growth District.

A. Board Determination of Completeness

Planning Technician, Megan Forston, stated that the Applicant has requested exemptions from submitting a grading plan, landscaping plan, elevations, drainage report, traffic analysis, soil analysis, historic evaluation, screening analysis, and architectural & visual appearance analysis. After reviewing each request, staff recommend that the Board grant the requested exemptions and accept the application as “complete.”

A motion was made by Roberta Mastrogiovanni to accept application, SPR-04-21 Modification #3, as “complete.” The motion was seconded by Kenneth Kost and was unanimously approved.

B. Public Hearing

Ms. Tara Kessler of BCM Environmental Land Law stated she is before the Board tonight representing Hundred Nights. Ms. Kessler stated the proposal before the Board is to install perimeter lighting around the Hundred Nights Shelter site at 122 Water Street. The purpose of this lighting is to enhance security and pedestrian safety and also to deter undesirable activity in the area surrounding Hundred Nights.

Ms. Kessler stated the proposal is to install a total of 10 fully-shielded LED light fixtures: eight of which would be mounted on the existing fence, which goes around the outer perimeter of the parcel. The lights would be mounted at a height of 10 feet above grade and they would be installed facing out towards the abutting properties, including the Railroad Street Condominium land and land owned by the City of Keene. Ms. Kessler noted The Railroad Street Condominium Association and the East Side Neighborhood Group have both requested the installation of this lighting. They are concerned about activity around the site and they feel this lighting will be a big step in improving security throughout the night. Ms. Kessler pointed out that the abutting landowner has also done a lot in the way of clearing vegetation around the exterior of the fence, and this will just be another way to enhance that security measure.

Ms. Kessler went on to say that they are also proposing to install two lights at the southwest corner of the existing building to improve the lighting at the corner of Water Street and Community Way, which is fairly dim currently. She explained that there is only one streetlight in that area and one building-mounted light. She also noted there is no lighting on the exterior of the fence today.

Ms. Kessler that part of this proposal are two waiver requests. One from the Site Development Standards regarding light trespass levels onto adjacent properties. The first waiver request is from Section 20.7.3.C of the Land Development Code (LDC), which states that, “*the maximum*

light level of any light fixture cannot exceed 0.1 foot candles as measured at the property line and cannot exceed one foot candle as measured at the right-of-way line of a street”

Ms. Kessler addressed the waiver standards next:

The first standard states that, *“strict conformity would propose an unnecessary hardship to the applicant and a waiver would not be contrary to the spirit and intent to the regulations.”* Ms. Kessler noted that due to the location of the fence, which is very close to the parcel’s boundary line, it wouldn’t possible to meet the request of the neighborhood group and the abutting landowner for increased security without light trespassing onto their property. She indicated that they feel the request meets the intent of the Site Development Standards, one of which addresses pedestrian safety, and noted that she felt this proposal is aligned with that purpose.

The second waiver is related to lighting hours of operation. She stated that a waiver is requested from Section 20.7.3. F.1.C of the LDC. This Standard states that, *“For 24-hour businesses, lighting levels shall be reduced by a minimum of 50% between the hours of 10:00 PM and 6:00 AM.”* The applicant feels strict conformity with this standard would be difficult to achieve. Hundred Nights is a 24-hour business. They intake guests between the hours of 2:30 PM and 9:30 PM, but the goal is to deter activity throughout the entirety of the night. She also noted that the site is located in a downtown area and the applicant would still be meeting the standards by installing light fixtures are fully shielded. Ms. Kessler stated there was discussion regarding a motion sensor at one point, but in order to deter people from hanging out and congregating in that area, having the lighting on all night would be the best solution. This is the reason the applicant is seeking a waiver from the standard. The concluded Ms. Kessler’s comments.

Mr. Clancy asked for added explanation for not having motion sensor lighting. Ms. Kessler stated this is an option the applicant is willing to pursue, but they feel having lights on shows that it is a space lit and can deter unwanted activity from the standpoint of public safety. With motion sensors, it comes on when someone approaches the area as opposed to having it on all the time, which they feel is a more secure measure. She went on to state that if installing motion lights are the route the Board wishes to take, the applicant is open to that as well.

Mr. Kost asked for clarification of the term “fully shielded” – Ms. Kessler stated this means that no portion of the bulb inside the fixture would be visible. All of the light is directed downward and there won’t be glare onto roadways or abutting properties. Ms. Kessler went on to say the reason the City of Keene is a signatory on the application is because the western portion of Community Way is actually a standalone parcel. Both the Railroad Street Condominium Association and the City of Keene have signed the application.

Staff comments were next. Ms. Forston stated the subject parcel is located in east Keene at the intersection of Community Way to the west and Water Street to the south. The site serves as the new home of the new Hundred Nights Shelter, which occupies the southwestern corner of the parcel. The parking area occupies the northern section of the lot and the southeastern portion of the lot serves as outdoor space for the shelter. As Ms. Kessler mentioned, the purpose of this application is to install eight new full cut-off light fixtures along the northern and northeastern sections of the fence and two new building-mounted full cut-off light fixtures at the southwestern

corner of the building. As was mentioned, they have requested two waivers from the Board's lighting standards related to lighting hours of operation and light trespass onto the City-owned parcel to the west and the Railroad Condominium parcel to the north and east.

In terms of regional impact, staff have made a preliminary evaluation that the proposed site plan does not appear to have the potential for regional impact, but noted that the Board will need to make a final determination.

Ms. Forston went on to say the only site development standard that is applicable to this application is the lighting standard outlined under Article 20.7 of the LDC. Section 20.7.2 of the states that, "*1. Floodlighting is prohibited, unless: a. The Community Development Director, or their designee, determines that there will be no negative impact upon motorists and neighboring properties; and b. The lights are directed toward the rear of a lot away from the road and neighboring properties, and are placed on heat or motion sensors. 2. Uplighting is prohibited.*" She noted that The Applicant is not proposing to install floodlights or uplight the property in any way. This standard appears to be met.

The next section, Sect. 20.7.3.A states that, "*All outdoor lights, including freestanding and wall mounted, shall be fully shielded and/or dark skies fixtures with no portion of the bulb visible.*" Section 20.7.3.B refers to Glare and states that, "*Lighting shall be installed and directed in such a manner as to prevent glare at any location, on or off the property.*" The Applicant is not proposing to install the new light fixtures in such a way that glare will be created; they have submitted a request for a waiver which has to do with the next section of the code (Section 20.7.3.C), which states that, "*The maximum light level of any light fixture cannot exceed 0.1-footcandle measured at the property line and cannot exceed 1-footcandle measured at the right-of-way line of a street.*"

Ms. Forston stated that this waiver is being requested because the lighting levels at the boundary lines between Hundred Nights, the Community Way parcel, and the Railroad Condominium parcel are going to be well above the 0.1 foot candle requirements. The two fixtures that are going to be installed near the southwest corner of the building are also going to cause light trespass onto Water Street and that will be above the one-foot candle requirement at the public right-of-way. She added that the Board will need to review the waiver criteria, as was mentioned by Ms. Kessler, in deciding if the waivers should be granted.

Ms. Forston went on to say the illumination section of the lighting standards (Section 20.7.3.D) states that, "*All illumination shall be of a white light and shall have a color rendering index (CRI) greater than 70. The color-temperature or correlated color temperature (CCT) of lighting shall not exceed 3,500 Kelvins.*" She noted that the light fixture that the Applicant is proposing to install has a color temperature of 3,000K, so this standard appears to be met.

Section 20.7.3E of the LDC addresses the height at which light fixtures can be installed and states that, "*The mounting height of fixtures, as measured from the finished grade to the top of the fixture or pole (inclusive of fixture) shall not exceed the maximum height as determined by the zoning district.*" Ms. Forston stated the applicant is proposing to install the fixtures at height of 10 feet above grade on the existing fence posts and noted that in the Downtown Growth

District, where the Hundred Nights parcel is located, it allows for a 20 foot maximum height. The applicant is in compliance with that standard.

The last section Ms. Forston referred to was in reference to Hours of Operation, Section 20.7.3.F of the LDC, which states that:

1. *“Outdoor lighting shall not be illuminated between the hours of 10:00 pm and 6:00 am with the following exceptions:*
 - a. *Security lighting, provided the average illumination on the ground or on any vertical surface does not exceed 1-footcandle.*
 - b. *If the use is being operated, normal illumination shall be allowed during the activity and for not more than 1-hour before or after the activity occurs.*
 - c. *For 24-hour businesses, lighting levels shall be reduced by a minimum of 50% between the hours of 10:00 pm and 6:00 am”.*

Ms. Forston stated that she had initially included a proposed motion in the staff report for this application; however, Ms. Kessler has addressed both items that were included in the motion. She noted that an owners’ signatures for all three parcels are on the final plan and five paper copies were submitted prior to tonight’s Planning Board. Staff’s recommendation is for the Board to issue final approval for the application with no conditions. This concluded staff comments.

Mr. Clancy asked how the lighting is handled on the other side of the trail where the basketball court is located. Mr. Rounds stated staff is not aware of any lights at the basketball courts. Ms. Kessler stated there are motion activated lights on the basketball court, but explained that she was not sure how long they stay on and added there is no lighting further south on the trail.

Ms. Mastrogiovanni stated the Board did attend a site visit and the abutters are encouraging the installation of this lighting, so she feels that this is a good idea.

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

C. Board Discussion and Action

A motion was made by Roberta Mastrogiovanni that the Planning Board issue final approval for SPR-04-21 Modification #3, as shown the photometric plans identified as “Hundred Nights Security Lighting” prepared by Charron Inc. on January 7, 2024 and last revised on January 18, 2024 with no conditions. The motion was seconded by Kenneth Kost.

The Chair asked the Board if they felt this application has any regional impact. Mr. Rangel stated he does not believe the project has any regional impact. Chair Farrington stated this is something the neighbors, property owners, and abutters are looking for and felt there is legitimate reason for the waiver request and felt it met all Board standards.

A motion was made by Roberta Mastrogiovanni to table the original motion. The motion was seconded by Kenneth Kost and was unanimously approved.

A motion was made by Roberta Mastrogiovanni that the Planning Board approve the Waiver request from Section 20.7.3.C of the LDC for the installation of security lighting around the perimeter of the site at 122 Water Street. The motion was seconded by Kenneth Kost and was unanimously approved.

Following this, a motion was made by Roberta Mastrogiovanni that the Planning Board approve the waiver request from Section 20.7.3.F.1.C of the LDC to allow for increased levels of trespass onto the adjacent properties at 0 Cypress St & 0 Water St. The motion was seconded by Kenneth Kost and was unanimously approved.

A motion was made by Roberta Mastrogiovanni that the Planning Board issue final approval for SPR-04-21 Modification #3, as shown the photometric plans identified as “Hundred Nights Security Lighting” prepared by Charron Inc. on January 7, 2024 and last revised on January 18, 2024 with the following no conditions. The motion was seconded by Kenneth Kost and was unanimously approved.

VII) Capital Improvement Program FY 2025-2031 – Presentation by Karen Grey, City of Keene Finance Director and Jesse Rounds, Community Development Director.

Senior Staff Accountant, Karen Grey, and Community Development Director, Jesse Rounds, addressed the Board. Ms. Grey stated she was before the Board to address the 2025 to 2031 City of Keene Capital Improvement Program. She noted this document is available for review on the City’s website. She explained that the Capital Improvement Program (CIP) is comprehensive plan that covers a seven-year period (2025 to 2031). It outlines the cost of programs, projects, and equipment that are funded by capital reserves or that have an estimated cost of at least \$35,000 and a useful life of over five years. The CIP is presented bi-annually and reviewed annually during the operating budget process. This is the bi-annual document and the first year of the CIP will be included in the 2025 operating budget, which is now in progress and will be presented to City Council in May.

Ms. Grey explained that the CIP is just a tool that the city uses for planning its future. It is guided by fiscal policy, for which goals are set by City Council and are outlined in the City's Comprehensive Master Plan. The City's Master Plan is a tool that guides the City's vision and the CIP projects presented in this book. Each project in this book, if applicable, is tied to a Master Plan focus area. The CIP process has been long and has had many reviews. It began with the departments compiling all the requested projects last summer.

Once their projects were submitted, they are then compiled by finance. Finance Staff performs multiple administrative and financial reviews to balance the needs of the CIP with the financial impact on the taxpayers. Ms. Grey indicated that the City cannot afford to place \$200 million dollars’ worth of CIP projects in one fiscal year. Some of the projects are very large and they are multifaceted. Hence, it needs to be balanced to hopefully have a flatter impact on the taxpayers, versus lots of peaks and valleys.

The seven year CIP totals slightly over \$200 million dollars. 15.5% of that is being funded from grants; 41% is being funded by debt; 16.7% is being funded from capital reserves that the City has already set aside; and the remaining 26% is being funded by current revenues, the City's fund balance, which has been accumulated over time, and new capital reserve appropriations to fund future projects.

She went on to state that a department overview was already provided on Saturday, January 20th. There were also two FOP meetings where each department presented every project in the CIP. Ms. Grey stated that after this evening, the next step in the process will be a public hearing on March 7th. The final FOP recommendation to City Council will be on March 14th and then City Council adoption will be on March 21st.

Mr. Rounds addressed the Board and stated the Planning Board's role here is to recommend to City Council (should they choose to do so), that they find the Capital Improvement Plan in compliance with the current Master Plan.

Mr. Kost referred to the Westside Downtown Parking Structure, and asked whether what is included in the CIP for a site is set or if that could change over time. Mr. Rounds stated that if projects are still out a number of years, then they could still potentially change. With reference to the parking garage, the City is ready to fund a study to look at the feasibility of a garage and a potential location.

Mr. Clancy asked if there are any projects that have been removed from the CIP book. Ms. Grey answered in the negative, but stated that if the City was to receive a grant for one of the projects before the budget adoption process in May, there would be adjustments made to the funding before the budget is approved.

Mr. Clancy referred to page 119 of the CIP book and noted that the revenue for the parking fund seems to be increasing every year. He asked if when those calculations are done, whether there is a way to factor in other variables, such as the future Main Street Downtown reconstruction, etc. Ms. Grey stated parking, water, and sewer are standalone funds and the only items that can be charged to the parking fund are parking related items.

Mr. Clancy referred pages 115 and page 124 of the document. He stated that the sections about EV Charging stations don't address anything about subsidizing a particular vehicle. He stated he sees public transportation and parking addressed. He noted the charging stations caters to the individual and not to the City as a whole. Chair Farrington stated there was definitely a high theme of sustainability in the 2010 Master Plan that went into detail with respect to electric vehicles. He added that because it is outside of the two year budget, he did not feel it was of too much concern.

He went on to state that by the time anything would be required for this project, the new Master Plan will be in place. Mr. Clancy stated the 2010 Master Plan is the one being referenced today and noted that he felt some of the items outlined in the existing Master Plan don't correlate with the people in the City, the business community, or the wants and needs of the actual city. He

added that he understands as a Planning Board member, their role is to approve the CIP and recommend that it is consistent with the Master Plan. Chair Farrington agreed the Board's role is to either approve or not approve the recommendation and noted that there is no opportunity to veto any one particular item.

Mr. Kost noted that for each project, it does outline goals, a vision, and includes a nice write up to go along with each project, so maybe this could answer the question Mr. Clancy was raising.

Mr. Clancy stated that at times, especially during the Joint PB-PLD Committee meeting sessions, the Board is voting on items that don't relate to the Master Plan. The Board is given pieces of the Master Plan that relate to that particular project, but then within the Master Plan itself, there are other things that contradict one another or don't correlate to that project. Mr. Rounds stated that he agreed with Mr. Kost's assessment that the goals of the Master Plan Vision section do reference sections of the master plan, and noted that he does agree there are times when the Master Plan contradicts itself. He stated that's often what Master Plans tend to do because they have to cover an entire vision for a community, and at times can say two things that contradict each other. He added that the installation of EV Charging Stations was one of the one of the goals of the Strategic Energy Plan, which was a goal of the 2010 Master Plan.

Ms. Mastrogiovanni noted that the City is has recently put together a Master Plan Steering Committee and that will work on the updated Master Plan that will eventually correspond with the new CIP Program. The Chair explained that the updated Master Plan will be produced in 2025 and note that in theory it will be good through 2035. Ms. Mastrogiovanni stated she would assume that the Master Plan Steering Committee will work in coordination with those who create the CIP. The Chair stated the Master Plan is created first and the CIP follows.

A motion was made by Roberta Mastrogiovanni that the Planning Board find the CIP for 2025-2031 consistent with the Comprehensive Master Plan. The motion was seconded by Kenneth Kost and was unanimously approved.

VIII. Fee Schedule Updates

Mr. Clements stated staff has come up with a fee for the proposed Cottage Court Overlay Conditional Use Permit application process that is going to be coming before the Joint Committee soon. This item needs to be added to the Board's fee schedule. Staff is also looking to change how they send abutter notices. At the present time, this is done via certified mail; however, there is another product offered by the Post Office called a "Certificate of Mailing." This option provides a verification that the letters have been received by the Post Office, which meets the statutory requirement for verified mail.

This product is much cheaper for the applicant than paying the current certified mailing rate for each abutter letter that is sent. Staff will be proposing this change to all Land Use Board fee schedules that require verified mail under State Statute. Ms. Forston noted staff is also adding additional fees for Earth Excavation Permits applications. Mr. Clements agreed and explained that the regulations for gravel pits and earth excavation were written a long time ago and have different requirements compared to the other applications that come before the Board. For

instance, the City cannot charge more than \$50.00 for an Earth Excavation “permit fee,” but there is nothing in the statute that says the City cannot charge an “application fee.” He went on to explain that considering the amount of effort for staff to review these applications, they are hoping to adjust those numbers to offset costs.

IX. Master Plan Update

a. Master Plan Steering Committee Membership Update & Nomination of Pamela Russell-Slack

A motion was made by Roberta Mastrogiovanni to accept the resignation of Armando Rangel from the Master Plan Steering Committee and elect Pamela Russell-Slack to serve in his place. The motion was seconded by Kenneth Kost and was unanimously approved.

a. Project Updates

Chair Farrington stated that the Master Plan Steering Committee had its first meeting on February 6th and stated that 16 out of 17 total members attended the meeting. The Committee was introduced to the project consultant, Future IQ. He went on to state that they spent a lot of time fleshing out the expectations of various members and reviewed information that the Committee would like to see going forward. The next meeting is scheduled for March 12th.

Mr. Clancy referred to Mr. Rangel’s letter where he indicates that the City Attorney had requested a Planning Board member leave the committee and asked for clarification about this. Chair Farrington explained that the City Attorney advised them that if five Planning Board members were present at a Master Plan Steering Committee session, then that would be considered a quorum of the Board and the session would be considered a Planning Board meeting. This would require that the meeting be noticed, etc. He stated that keeping the membership to only four Planning Board members, which is what it is right now, would prevent this from happening.

X. Staff Updates

Mr. Clements stated that at the last meeting, there was a request from the Board to get more information regarding the potential storage of hazardous and toxic materials in self-storage units. He indicated that he did not have a chance to review leasing documents; however, he did some preliminary research on a few different self-storage vendors in Cheshire County and all of them are very clear that they do not permit a flammable, hazardous, and toxic materials on site and they reserve the right to inspect belongings as they enter the site to ensure those materials are not stored at their facility. Chair Farrington asked what happens if someone stores a boat, motorcycle or a car. Mr. Clements stated most facilities also do not permit the garaging of vehicles.

XI. New Business

None

XII. Upcoming Dates of Interest

- Joint Committee of the Planning Board and PLD – March 11th, 6:30 PM
- Planning Board Steering Committee – March 12th, 11:00 AM
- Planning Board Site Visit – March 20th, 8:00 AM – To Be Confirmed
- Planning Board Meeting – March 25th, 6:30 PM

There being no further business, Chair adjourned the meeting at 8:52 PM.

Respectfully submitted by,
Krishni Pahl, Minute Taker

Reviewed and edited by,
Megan Fortson, Planning Technician