

NORTH BERWICK, MAINE 03906

MINUTES OF PLANNING BOARD NOVEMBER 13, 2014

Present: Chairman Barry Chase, Mark Cahoon, Geoffrey Aleva, Rick Reynolds, Jon Morse

Absent: Anne Whitten

Also Present: Lawrence Huntley, CEO, Lee Jay Feldman, Bill McKenney, Tyler Sterling, Linda Easley, Victoria Mackenzie, Evan Mackenzie, David Cutter, L. Santor, Donald Royal, Sonja Royal, Jae Ran Shute, Bill Shute, Rick Stambaugh, Charles Barto, Shirley Barto, Jonathan Mopes, Neil Rapoza, Lydia K. L. Cook

1. Call to Order:

Chairman Barry Chase called the meeting to order at 6:30 pm.

2. Review of Previous Minutes:

Rick Reynolds stated that on Page 3 in the third paragraph, the second sentence currently reads, "Mr. Sterling stated that the 36,000 building was always a challenging project.". It should read, "Mr. Sterling stated that the 36,000 square foot building was always a challenging project."

Rick Reynolds motioned to approve the minutes of October 23, 2014 as amended. Jon Morse seconded the motion. VOTE: 5-0

3. Current Business:

Chairman Chase stated that the next item on the Agenda was for the applicant Hannaford Bros. Co., LLC. It is a Public Hearing to present a proposed Site Plan and Building Amendment to a Previously Approved Site and Building Conditional Use Permit (Map 17, Lot 7) at 23 Somersworth Road.

Bill McKenney stepped forward and introduced Tyler Sterling. He stated that they were here to respectively request approval of our Phase 1 plans. He stated that they originally submitted plans in October and met with some of the staff in Town as well as with the Planning Board. There were comments and suggestions made at this time so they have since updated their plans per these comments.

Mr. McKenney stated that in October of last year, the Planning Board granted Hannaford a conditional use approval for a 36,000 square foot supermarket and pharmacy. He went on to

show what the plan looked like before and what they were currently proposing. Since that time, they have purchased the property and they have done some initial site work. They have demolished the buildings, done some asbestos abatement and done some grading. He stated that there was some stained soils associated with the auto garage, which they hauled off site. He stated that, what they typically do after getting approval, is address format related issues inside the store. What they have found in doing this, is that it became very challenging from a financial standpoint to do the 36,000 square foot supermarket with a pharmacy to be viable. For the past several months, Hannaford has been working on the development of a smaller store prototype for smaller markets. It is a 20,000 square foot supermarket. It took them a while for them to realize that the best approach would be to build this 20,000 square foot prototype supermarket instead of the 36,000 square foot supermarket and pharmacy. If the Planning Board approves the proposal, North Berwick will have the first one.

Mr. McKenney stated that last month they submitted updated plans for a Phase 1 improvements, which is the 20,000 square foot supermarket without a pharmacy. He went on to show everyone the new plan and go over the changes. Their plan is to build, as Phase 1, a 20,000 square foot supermarket. They will have a smaller store and smaller parking lot. He stated that receiving will still be at the rear of the store and parking is in the front for customers. They have the same access from Route 9 and Route 4. There are no changes relative to the use of those access points. He stated that last year, the Planning Board had insisted that they only use the Route 9 entrance for their truck access. This will stay the same. There is no change with the utilities. They made a commitment that they would upgrade the existing water infrastructure to a 12 inch water line and they will still do this. The generator and transformer have been moved. They used to be adjacent to the loading dock. There used to be 5 LP gas tanks but they are now proposing 4 and want to locate them closer to the supermarket. They are making a change to the lighting and are now proposing LED lights. There will be less poles because there will be less parking. He stated that the lighting is the same at the property lines. The Ordinance calls for there not to be an excessive amount of light beyond the property line. They are still providing full cutoff luminaires. Also the trees planted there will also provide additional coverage. He stated that due to the reduced parking, there will be two less islands with trees.

Mr. McKenney stated that when they submitted the revised plans, the Town staff had comments about them. The staff was concerned because on the new plan, Hannaford was proposing to shorten the buffer to the rear of the store. The Planning Board insisted that they reinstate the full buffer now so when they do expand in the future, the trees will have all matured at the time. Mr. McKenney stated that the Ordinance has changed in two respects since they last met with the Board. There is now a requirement to use granite curbing on all projects. They proposed slip form concrete curbing before and they are requesting that the Board allows them to continue with this as a grandfathered condition since they are not changing the curbing.

Mr. McKenney stated that the other Ordinance change has to do with the architecture of the building. He stated that when they first went before the Board for approval there were some requirements that they needed to meet for the building design. Now there are additional changes that need to be made due to the new Ordinance. They have added a mansard roof around all four sides of the building. They have added three windows to the wall that faces Somersworth Road. He stated that overall, the building is similar to before but just smaller.

The other change has to do with the signage. Mr. McKenney stated that they are not requesting a Pharmacy at this time so this resulted in a change in the allowable square footage for signage. He stated that before they had three businesses which were the supermarket, pharmacy and the CLYNK redemption center. Now that they are not having the pharmacy, they go from 180 square foot allowance to 120 square foot. In addition to the sign being smaller than before, the Ordinance no longer allows internally lit signs so it will now be externally illuminated with ornamental light fixtures.

Mr. McKenney also stated that last year they had a mechanical center in the back of the building. A couple of months ago, they had proposed to put it on the roof but the Planning Board did not look favorably on that appearance. He stated that since the meeting with the Board, they have moved the mechanical center back down to the ground in the back of the store.

Rick Reynolds asked if the window sizing had been addressed that was talked about at the last meeting. Chairman Chase asked Bill McKenney if they had figured out the square footage for the windows. Mr. McKenney stated that the Ordinance requires 20 percent window area and they are right at that 20 percent.

Chairman Chase opened the Public Hearing at 6:47 pm.

Linda Easley stated that the main reason that the store approval went through the first time was because of the pharmacy. She stated that they are now saying that they will put one in in the future. She stated that this was very open-ended. She is wondering how far in the future before the pharmacy is added. Mr. McKenney stated that he couldn't say exactly when they would add a pharmacy. He stated that they recognize the displeasure of the people regarding not having the pharmacy. They would like to provide one but it is not viable at this time. He said that Hannaford continues to look at the market and look for possible expansions in their stores. When they see that it would be viable for them to add it, they would do so.

Bill Shute asked what has happened in the short span of time of one year that has not made the pharmacy viable. Mr. McKenney stated that it is a standard process for Hannaford and it is not uncommon for them to show Phase plans initially. They did not do this in North Berwick. Mr. Shute stated that he feels it is a "bait and switch". Mr. McKenney stated that it definitely was not a "bait and switch". They had every intention of building the 36,000 square foot store here. They would not have dedicated the time and resources to it if they didn't plan on building

because it is a very expensive process to go through. They are committed and really want to build the store here. He stated that after permits are approved, they go through and evaluate the store. When they did this, the 36,000 square foot store with the pharmacy was found to not be viable from a financial standpoint based on market conditions. Mr. Shute asked why they didn't do that before the first approval. Mr. McKenney said that they did run numbers in order to justify the time commitment and cost associated with permitting. He stated that with North Berwick, it was evident during the prior process that it was very challenging from a financial standpoint. They did not realize how challenging until later on in the year. Fortunately, they have been developing the smaller store prototype, and this is allowing them to go on and build a store in North Berwick at this time. He stated that they feel that it is a great opportunity for North Berwick to be the first town with this new prototype store.

Linda Santor stated that the pharmacy was a viable source to get people to go into the store. She feels that the elimination of the pharmacy will also eliminate revenue from the store. People would go in to get their prescriptions as well as do their shopping. Mr. McKenney stated that she is right. He said that in taking the pharmacy out and people wanting to do one stop shopping, they may shop elsewhere. He knows that there is going to be an impact. However, the issue is that the pharmacy is a very expensive component from a labor standpoint. They would like to see that work as much as the Town would because they want the extra sales brought in for the supermarket for the people that wants the "one stop shopping". However, what works now is the smaller supermarket with the hope of expanding it and adding a pharmacy in the future.

Charles Barto stated that Dollar General has used the granite curbing. He stated that it is in our code right now. Chairman Chase stated that Dollar General did not use the granite curbing. They poured their curbing and sidewalk as one pour so there are no seams. Mr. Barto stated that if it is in the Ordinance to use granite curbing than we should stick to it. It looks nice and holds up nice. Chairman Chase stated that the intent of the Ordinance for granite curbing was to only be on town maintained curbs. He said that it somehow became turned around where it was required for the entire project.

Dave Cutter asked if there was going to be any road signs as well as on the store itself. Mr. McKenney stated that there are signs at each of the entrances. These are not being changed from the prior approval. Mr. Cutter asked if the utilities were underground and Mr. McKenney stated that they were. Mr. Cutter also asked if the explosive arc on the LP tanks was within their property lines. Mr. McKenney stated that above ground tanks need to be at least 25 feet from property lines and buildings and underground ones need to be at least 10 feet per the Ordinance and state standards. They will have above ground tanks and are 100 feet away from the property line and the building. Mr. Cutter asked if there was going to be any lighting at the entrance from Route 4. He is concerned about traffic and visibility with the cars coming in and out of that driveway. Mr. McKenney stated that both Route 4 and Route 9 are state roads so their plans are subject to State DOT approval. They need to go through this process again. They need to get an

updated traffic movement permit from DOT which they had done last December. They originally had permitted with DOT to have a slip lane on Route 4 for vehicles. It is the same on the Route 9 side. They are now hoping to eliminate the slip lane on the Route 9 side. It will be up to DOT. Regarding the lighting at the entrances, they need to meet State requirements as part of the traffic movement permit for safe illumination at the driveway.

Charles Barto stated that given the traffic on Route 4, he feels that the Route 9 entrance will be the more viable for people to use as the entrance so he feels that the slip lane is still needed. He thinks that people will use the shorter entrance more than the longer one. Geoffrey Aleva stated that he would be surprised if DOT allows them to remove the slip lane because of the potential for expansion.

Mr. McKenney stated that they are also still going to build the sidewalk that was approved in the original plans.

Bill Shute asked if they had an anticipated completion date yet. Mr. McKenney stated that they would like to get the store open as soon as possible because they don't start making money on this project until the cash registers are open. They hope to get the foundations in by next month and get the building underway before winter. They will continue to work on the building and hope to open by the fall of next year.

Rick Stambaugh stated that last year during the approval process, the Board consciously minimized applying conditions to the permit in lieu of conditions that Hannaford address some of the performance standards with their plan. No conditions that would ensure that the performance standards were met were established. This time, conditions must be established. Given Hannaford's deception, you now know that you can't trust Hannaford to do the right thing. Having conditions on the conditional use permit is not a penalty or imposition. It is good business. Effective conditions allow Hannaford to thrive while ensuring that neither safety nor abutters are impacted. Conditions are a way to do that. You will notice that Hannaford sets conditions. Mr. Stambaugh stated that now that there is a do over, he hopes that the Board will take the opportunity to approve the permit with conditions that will ensure that our performance standards are met. He asks the Board to review the letter that he submitted in 2013 where he recommended conditions that would ensure performance standards are met. The three main performance standards that he wants met are noise, lighting and water runoff. He asks that the Board sets conditions like limiting noise generating activity hours, all delivery vehicle routing and screening. Don't just expect that the performance standards will be met because the drawings say so. A condition requiring a financial guarantee is warranted to ensure rapid mitigation of unforeseen adverse effects of this new commercial use on neighbors. In conclusion, our Ordinance recognizes that one cannot anticipate all of the adverse effects of new uses. It provides the minimum performance standards to achieve harmonious use but it has a conditional use permit process so you can set conditions that will ensure that those performance standards are met.

Mark Cahoon stated that the Board had addressed everything that he had written in his previous letter. He feels that Mr. Stambaugh is just brow beating and preaching to the Board again. Mr. Stambaugh stated that they did not set any conditions that he had asked for.

Shirley Barto asked what was going to happen to the 100 jobs that they were going to have. Tyler Sterling stated that with the 36,000 square foot store, the estimate was for about 90 jobs which was going to be 30 full time and 60 part time. Now with the smaller store, the estimate is between 60-70 jobs. He doesn't have a definitive number because this is a new store and they are still working some of these things out.

Chairman Chase asked them to discuss what exactly was going to be included in the store. Mr. Sterling said that it will still be a full shop and it is by no means a convenience store. There will still be produce and a bakery. They are going to have a focus on home meal replacement such as rotisserie chickens, pizza, sandwiches, salads, etc. There will also be a service deli, meat, seafood, wine and beer. The center store will still have everything there but with probably a little less variety.

Linda Santor asked if anyone had talked to York Hospital about putting a pharmacy in the store. Since it is a financial hardship on Hannaford, maybe York Hospital would be willing to put one in. Tyler Sterling stated that they have not approached a third party to come in.

Linda Easley asked if there was going to be an organic section and Mr. Sterling stated that there would be.

Jae Ran Shute asked what the hours were going to be. Mr. McKenney stated that they do not have the times set yet. Mr. Barto asked if the Planning Board had the authority to set the hours. He was also wondering about when the lights would be turned off. Lee Jay Feldman stated that there were times mentioned in the original approval. This is just an amendment to the original site plan. Any other conditions that were set in the original approval are still all the same and are not changing. Mr. McKenney stated that the lights will be turned off one hour after the store closes. There will be one light on the poles that will come on early in the morning for some deliveries and for the early morning associates. He stated that if there was any safety concerns, than they would have more lights on. He doesn't anticipate for this to happen here. Mr. McKenney stated that nothing is controlled from the store itself. All controls for refrigeration and lighting is automated and controlled from the home office in Scarborough.

Evan Mackenzie asked if the Board sets the guidelines for deliveries as far as times for delivery and access in and out. Lee Jay Feldman stated that it was discussed previously but he doesn't recall the final result. He stated that the Planning Board can stipulate that no delivery trucks on site prior to a certain time, but the problem is enforcing this. He stated that they can control their own trucks but the small delivery trucks are a little harder to handle. Larry Huntley stated that there is another business here in town that agreed to certain things at a Planning Board meeting

but then neighbors noticed that they are not adhering to what they agreed to. He gets calls all of the time for things like this. He then calls the store or head office to discuss it with them and they have been good about adhering to the problem. Larry doesn't think that Hannaford would be a problem and would adhere to any complaints.

Chairman Chase closed the Public Hearing at 7:30 pm.

Larry Huntley commented on the statement that Tyler Sterling made earlier regarding selling liquor. He stated that they would not be able to because our Ordinance does not allow it.

Chairman Chase asked Lee Jay Feldman to go over his memo. He stated that the building is being shrunk from 36,000 square feet to 20,000 square feet. Parking is going from 173 spaces to 115 spaces. The building has been changed to meet the new building standards in the new Ordinance. They have added the mansard roof, windows on the side of the building, and HVAC and compressors are now off the roof and behind the building. In regards to the signage, the sign is now smaller to meet the square footage that is allowed for the number of uses. It is also now an externally lit sign with goose neck style fixtures. Regarding the utilities, the number of propane tanks has gone down from 5 to 4 and the location is moving northerly from where it was previously located but are not moving closer to any property boundaries. The lighting in parking lot is now going to be LED lighting. There is no change in the site grading. The wet ponds are staying the same. The only thing that will change is that there will be less grading because of the shrinking of the parking lot. The landscaping is staying the same except for where they are removing the islands in the parking lot. Regarding the off-site improvements, Hannaford is seeking an amendment to remove the slip lane from the Route 9 entrance. The sidewalks will also still be designed as previously approved.

Lee Jay Feldman stated that Underwood Engineering made a couple of comments in regards to the changes to the site. They stated the crossings under the roads be reviewed for compliance with the DEP requirements, as well as with the sewer and water districts. In regards to offsite roadway and utility improvements, they stated that there is a manhole in the middle of the sidewalk on Route 9. They are suggesting that they look at that for an alignment purpose to see if it can be relocated or not. Also the alignment of the ADA landing ramp at the intersection of Route 4 and Route 9 appears to be aligned with the stop bar and not the 6' striped crosswalk.

Lee Jay Feldman is proposing the following recommendations for the Board's consideration:

1. The applicant be required to come back and submit to the Planning Board for the expansion to 36,000 square feet if it is ever contemplated.
2. The sewer and water crossing detail be provided for review by the water and sewer districts prior to construction for conformance with MDEP requirements.

3. The location of the proposed sidewalk on Route 9 may conflict with the Existing SMH B. Clarification and/or alignment modification is needed, and must be approved by the North Berwick Sewer District.

4. The alignment of the ADA landing ramp at the Route 4 and Route 9 intersection appears to be aligned with the stop bar and not the 6' striped crosswalk. This must be adjusted for appropriate construction purposes.

Mr. Feldman also told the Board that he had presented them with a draft of the Findings of Fact. They do not have any final conditions because he did not which conditions, if any the Board was going to approve. He stated that if the Board did approve the amendment tonight, they could approve it with the Findings of Fact and he would insert the conditions that the Board approved.

Chairman Chase asked the Board if any of them had any comments in regards to the conditions or any other questions.

Rick Reynolds asked if there was going to be an emergency generator and Mr. McKenney stated that there would be ne next to the transformer. Mr. Reynolds asked if the snow removal was going to be offsite. Mr. McKenney stated there may be some onsite but if there was a significant amount of snow than they would haul it offsite.

Jon Morse stated that the recommendations numbered 2, 3 and 4 would have to be adhered to anyway whether the Board approves them or not. Mr. Feldman stated that they would be but he included them as more of a safety gap and to make sure that we did not bypass that information.

Rick Reynolds stated that in regards to recommendation #1, it sounds like there may be more than one expansion so he thinks that it needs to read: "The applicant be required to come back to the Planning Board for any expansion.". He doesn't think that it has to be to the 36,000 square feet. Lee Jay stated that the intent of this condition is to make sure that there is no insinuation that there were already approvals for that. If there are different Board members, having this condition will help them to know that they are not automatically approved. Bill McKenney would like to keep the original approval so that if they would like to build to that plan they would be able to do it. Larry Huntley stated that the Board can approve it for the 36,000 square feet, but for any architecture changes, it would have to be approved to the current standards at the time of the request.

Jon Morse asked if they had done a cost analysis on the original construction plan vs the new construction plan. He feels that adding on the improvements such as the roof and windows is just as costly as building the extra 16,000 square feet. Mr. Sterling stated that these additions are significantly less than building the additional square footage. Mr. Morse stated that when they do decide to expand, it will be a significant cost because they will have to tear down the wall to expand.

Chairman Chase asked Mr. Feldman about rewording condition #1. He stated that if it is the architecture that the Board is concerned about, they could probably say something like: "The applicant be required to submit revised architectural plans for a 36,000 square foot building at the time the expansion is proposed, to be reviewed for the consistency of the Ordinances at that time."

Lee Jay Feldman read the reworded conditions into the minutes:

1. The applicant be required to submit revised architectural plans for the Planning Board to review prior to allowing construction of the previously approved 36,000 square foot building, providing the addition meets the previously approved footprint as shown on the plans. No site plan review process shall be required providing the original approval plan set from October 10, 2013 is adhered to.
2. The applicant meet all previously approved conditions from the October 10, 2013 plan set.

Rick Reynolds motioned to approve the above mentioned conditions #1 and #2.

Chairman Chase asked Larry if they needed to approve the Findings of Fact before they can approve the amendment. Larry stated that they did not. Chairman Chase recommended that they go over the Findings of Fact at the next meeting.

Geoffrey Aleva motioned to approve the proposed site plan and building amendment to a previously approved site and building conditional use permit (map 17, lot 7) for Hannaford Bros., Co., LLC at 23 Somersworth Road with the conditions as discussed #1 and #2 as read into the record by Lee Jay Feldman from the Southern Maine Planning & Development Commission. Rick Reynolds seconded the motion. VOTE: 5-0

4. Other Business:

Chairman Chase stated that Gray & Osgood are requesting to rescind the approved subdivision for the Mill View Estates. They want to be vacated and returned to the status prior to approval.

Rick Reynolds motioned to approve the vacation of the approved subdivision and recorded plan of Mill View Estates, Mill View Way, North Berwick, Maine. Mark Cahoon seconded the motion. VOTE: 5-0

5. Adjournment:

Rick Reynolds motioned to adjourn the meeting at 8:13 pm. Mark Cahoon seconded the motion. VOTE: 5-0

Lawrence Huntley, CEO
Planning Coordinator

Respectively submitted,
Susan Niehoff, Stenographer

Chairman Barry Chase

Geoffrey Aleva

Rick Reynolds

Mark Cahoon

Jon Morse

Anne Whitten