

**PLANNING BOARD  
TOWN OF PETERBOROUGH, New Hampshire**

**Minutes of August 20, 2012**

**Members Present:** Chairman Rick Monahon, Joel Harrington, Alan Zeller, Rich Clark, Alternate Jerry Galus, Alternate Audrey Cass, Tom Weeks, Ivy Vann and Barbara Miller, *ex officio*.

**Staff Present:** Carol Ogilvie, Director Office of Community Development; and Laura Norton, OCD Administrative Assistant.

At 5:30 Chair Monahon recommended waiting a few moments for Ms. Goohs who had not arrived. "We want to discuss everything in her presence" he said. She arrived at 5:35 p.m. and the meeting was called to order by the Chairman. He welcomed the audience and introduced the Board and staff. He noted the only item on the agenda was a Site Plan Review for the Magic Flute Child retail store at 99 Grove Street. Chair Monahon went on to note "the first task is to determine whether or not the application can be accepted as complete." He noted Ms. Ogilvie's Staff Report as being quite thorough and her recommendation was that the application was complete. He asked the members "are there any objections or ongoing thoughts about this application?" Ms. Vann replied "looks complete to me." Mr. Weeks asked "can we still request additional information?" with Chair Monahon replying "yes." Ms. Miller noted some questions about the curb cuts with Ms. Vann adding "looks like DOT has weighed in on that." Chair Monahon also noted an abutter's letter "which I think we will spend some time discussing this evening."

A motion was made/seconded (Harrington/Vann) to accept the application as complete with all in favor.

Chair Monahon began with some brief deliberation on the application "to try to identify additional information they may need." He then asked if any of the members had anything they would like to discuss about the application. Mr. Weeks responded "I have a couple of things." He went on to note he felt the plan needed additional information (specifically the lack of interconnection of lots that would provide and promote pedestrian and vehicular access between them without accessing the highway, as mandated by the Performance Standards in §245-9 D (6) and whether or not the lighting plan met the trespass thresholds as required).

Mr. Harrington interjected "why don't we hear from the applicant first; some or all of this may be moot." Chair Monahon agreed, adding he was trying to be helpful in emphasizing what to focus on.

Chad Branon introduced himself as a Civil Engineer with Fieldstone Land Consultants located in Milford, New Hampshire. "I represent Ms. Goohs and the Magic Flute Child children's retail store" he said. He went on to add "as you may know, that store is currently located about a half mile up the road."

Mr. Branon noted he would simply walk the members through the plan. He began with the existing conditions of the property noting the proposed store sits on 0.8 of an acre, has frontage on both Routes 101 and 202 and is located in the Village Commercial District. He reviewed the frontage,

setbacks and buffer requirements. He noted that Phase I of the plan was re-purposing of the existing building with associated site improvements. He noted it was a 1932 square foot building proposing five regular parking spaces and one handicapped space. He pointed out the Route 202 entrance to the lot through the northern curb cut, past an outdoor seating area, around the back of the building with the exit back on to Route 202. He noted the Staff Report mentioned a need for compliance with Town Driveway Regulations and a designated curb cut width or radius to be defined. "This is a unique entrance to 202" he said adding "there have been no modifications so there is no reason to propose a radius. It is an open curb cut allowing entrance on to the property." He noted the plan had been reviewed by DOT and "that is the DOT's preferred layout." He added "the only restriction consisted of no left turn out of the northern curb cut in to the intersection."

Mr. Brannon reviewed the total reduction of 3700 square feet of impervious surface for the property and noted the lighting plan would be spec'ed to be full cut off 90-degree lights to prevent light pollution. "It will be really low key" he said. A brief discussion about an existing light fixture at the south side of the lot followed.

Mr. Branon went on to discuss Phase II of the plan which included an 1868 square-foot addition to the existing building. He pointed out the requirement for the removal of the outdoor seating area, a one-way traffic pattern and a parking increase to twelve parking places (one ADA compliant). He noted that Phase II would require some paving in the back of the lot reiterating "but the overall reduction is significant when compared to the existing lot." He reviewed the need for minor grading on the back slope and that he did not anticipate any problems with DOT's approval of Phase II. He offered e-mail correspondences for review if the Board felt it necessary. He added "this is a low-traffic generator user." He reminded the members the applicant's current store "already exists less than a half mile up the road, her customers use the road already" he said. Mr. Branon went on to add "if DOT thought any more data was needed they would have requested it" adding "or any action should be taken it would be in their permit. This is *their* road." Mr. Branon went on to review the landscape plan pointing out a walkway, vegetative areas and plantings.

Mr. Weeks asked about the stockade fence on the south side of the lot. Mr. Branon referred to a survey by Bill Bean showing the location of the fence. "The majority of the fence is my client's property" he said. He did point out one section that travelled on to the Stewart property to the south. Mr. Branon added "this was prepared by a licensed land surveyor" adding "and we have been able to tie into it within an inch."

A brief discussion about the monitoring wells on site, covering existing pavement with dirt (covering dirt for Phase I, removing it at Phase II), and drainage and site remediation followed. Mr. Branon reported the levels of contamination on the site were at a level that would allow development with further monitoring. He noted his client was willing and wanted "to remediate the site even more than what was required" and offered correspondence from DES which indicated that. Mr. Harrington asked about the line of sight "in terms of coming out of the property" with Mr. Branon reiterating the southern curb cut would be an exit only with no line of sight issues at the exit to Route 202. A brief discussion followed. Mr. Harrington also asked about trash removal with Ms. Goohs replying she did not intend to have a dumpster on site and would remove the trash from the premises herself. Mr. Harrington replied "one final thing" and asked about the parking differences between Phase I and Phase II. "It seems like you are taking away some of the parking and moving it

to two different locations.” Mr. Branon replied “there will be no parking along the north property line so in Phase II we will use the northwest corner.” He noted in Phase II the delineation of the parking spaces would change and the pavement would be eliminated. Mr. Harrington asked “what about your snow storage in Phase II?” Mr. Branon pointed to the back side of the lot replying “it will go where parking was in Phase I.”

“Last question” noted Mr. Harrington “can you speak to the traffic issue raised by the abutter?” Mr. Branon replied “there are a number of things.” He spoke briefly about the specifics of a traffic study and the adequate function of the intersection. He added “the DOT has not required a traffic study, this is an off-peak user.” He stated the business hours of operation and said “she completely misses the AM peak.” Mr. Harrington interjected “but it is fair to say that fall and summer the peaks are all day.” Mr. Branon replied “not to mention her current business is one half mile up the road.” When asked, Ms. Goohs confirmed her peak traffic is 10 clients an hour. Mr. Branon also noted “the exit is as far away from the highway as possible on this site.” He noted that Mr. Stewart tended to back out of his driveway adding “this actually provides traffic breaks for him to back out more safely.” Mr. Branon also noted “we do not anticipate any issues with the traffic; if the lot is full she may not get that customer.” Mr. Zeller asked for clarification on the flow of traffic with Mr. Branon reiterating the one-way entrance on the northern curb cut noting “this parking plan was built to adhere to the proper exiting.”

There were no other questions for Mr. Branon and he thanked the Board at 6:15 p.m.

Silas Little introduced himself as the attorney representing Jim and Paula Stewart. He noted changing the elevation of the site would inevitably change the drainage “I see no provision for that on the abutter property” he said. Attorney Little also doubted the notion that covering an impervious surface with a few inches of soil would successfully grow grass or vegetation noting “you will not get anything of substance to grow there” he said,

Attorney Little noted his client is appealing the DOT issuance of the curb cuts, noting “the property has been abandoned for 15 years” adding “we believe the DOT made a mistake in grandfathering two curb cuts, the lot should have one curb cut, not two” adding “there is not sufficient frontage for two.”

He cited §233-35, the Board’s ability to require a traffic study at the applicant’s expense. He gave the members a brief history of the parcel and noted “I don’t know if you recall but Cumberland Farms had a plan for that lot in 2002.” He went on to note that a traffic study done in 2002 by Stephen Pernaw (“a well-respected traffic engineer”) predicted that intersection would be functioning at a Service Level E by 2012 and that the provisions made for traffic were not sufficient for that plan. “Based on that a traffic study should be done” he said. He reiterated that the parcel had been long abandoned with no business functioning there for over a year and that (the parcel) should not have been grandfathered for the two curb cuts.

Attorney Little continued by noting “the website for the Magic Flute says it serves food” adding “seems to me that under your own regulations when you have mixed use of retail and food you have to comply with provisions for parking. This does not.” He mentioned the fenced-in area to the north. He looked at the members and said “It makes me pause to wonder what the plan is” adding “why

have a fenced-in area if you weren't going to have some reason for the people to stay there?"

A brief discussion about the store selling Italian Ice and Gelato, using grass as a buffer zone and appropriate and attractive screening followed. He also noted "grass will not keep people from parking in the 30-foot buffer" and "there is no evidence that what is proposed has been approved by the property owner." Attorney Little went on to say "they say they reserve the right to approve the plan, that is rather important and I am not sure where we stand in respect to that matter." He also reiterated the potential drainage problem noting "the area is fairly level and Jim's house is fairly close."

Attorney Little briefly touched on peak hours of traffic, the need for a traffic study, and the ownership of the fence located on the south side of the property. In reference to that fence he said "my client's predecessor put up the fence, it is not the applicant's fence, and the applicant cannot use it as a part of their plan." He concluded by noting "policing after the fact is never as satisfactory as attending to those problems before they occur, thank you."

Mr. Branon rebutted much of Attorney Little's statements reviewing and reiterating the drainage and parking issues. In reference to Mr. Stewart's appeal to the DOT curb cut he noted "I have never seen a third party appeal approved" adding "and comparing this store's volume to a store like Cumberland Farms is a stretch." He emphasized two completely different traffic patterns saying "you are not comparing apples to apples if you compare us to them" adding "if we were alike I would be here tonight with a traffic study, it would be required." He reviewed the trips generated for the site as being on record and that it is DOT that determines whether a study is required. "A study that costs money with no net gain" he said. With regards to the fence Mr. Branon said "it sounds like the abutter is making a claim of Adverse Possession" adding "the finished side of the fence faces my client's property, and more than 80% of the fence is on my client's property. If I spent the money on a fence I know what side would be facing me."

Jim Stewart introduced himself and his wife and noted he would like to point out a few issues that Attorney Little did not speak to. He began with all of the unknowns regarding the traffic. "What level of service is the intersection now and what would it be with this store?" he asked. He noted a 30 by 32 foot outdoor eating area and asked "what is the purpose of that?" He went on to say "you could put picnic tables in there and accommodate 40 to 50 people. Ms. Goohs replied "I like children, the fence is so they can be outside and do activities and sing."

A brief discussion of the traffic study in 2002 followed, Mr. Harrington asked if any significant changes had been made to the intersection since 2002. Mr. Brannon noted that he was not an engineer "but to me it looks very similar to what it did in 2002."

Mr. Stewart pointed out several (as many as eight) granite posts marking his boundary line that included the fence. Mr. Harrington reminded him that the ownership of the fence was not a matter before the Board. The vegetative buffer was also discussed with Mr. Stewart noting the importance of a buffer to mitigate the impacts of a commercial lot next door. He also pointed out the lighting had not been properly addressed and there was a light fixture located in the 30-foot buffer area. He made it clear that fixture should be removed. Ms. Goohs spoke about the historic value of the fixture. "It is lovely" she said. She also pointed out the fixture was grandfathered by the lighting

regulations. Attorney Little noted “the property has not been used for over a year, it has been abandoned for over 15 years. It has lost its status. You either need a new approval or it must be taken out.”

Mr. Weeks noted “one option would be to go with a 1650 lumen or less.” Mr. Carrara interjected “I thought that exception is only for residential.” Mr. Harrington interjected “we have heard what we need to hear and will take it under advisement.”

Mr. Branon noted he had simply presented the intent of the plan through both phases, “and I certainly have no intention of that area being used for parking.” He went on to suggest the possibility of installing the fence for Phase II on the back side of the drainage swale “which will, again, determine parking limitations.

Jim Fletcher introduced himself as an abutter. He noted the heaviest traffic at the intersection was between 5:00 and 6:00 p.m. “This is a busy intersection” he said adding “it (the store) would not be adding anything significant to this traffic in my point of view.” Mr. Fletcher concluded by noting “it is better than what is there now and with too many restrictions nothing will go in there.”

George Sterling introduced himself and began with “this is a blighted sight.” He went on to point out “four other blighted lots” just up the street. He looked to the Board and said “I encourage the Planning Board to do anything it can to make this project possible.” He cited the Master Plan and added “Jacqueline should be applauded for her efforts at this important gateway.” Mr. Sterling concluded by noting that improving any one piece of property in a neighborhood “usually acts as a catalyst to improving the rest.”

Mr. Carrara noted that Mr. Weeks had been correct, and that the 1650-watt incandescent bulb exception was for both residential and commercial. Mr. Carrara went on to respectfully ask the Board to clarify the 30-foot buffer verbiage “being as specific as possible” he said. He also asked the Board be as specific and detailed as possible when determining parking and traffic flow as well as any conditions of approval.

Mr. Fletcher noted he though the plan had been approved by the owner. Ms. Goohs replied “it is approved, everything is approved.” Attorney Little suggested that might not be the case noting “we have seen nothing submitted to say it has.”

Mr. Branon concluded “there is a plan and that plan has been presented.”

Chair Monahon asked “are we ready to deliberate?” Both Mr. Harrington and Ms. Vann relied “no” at the same time. Each noted additional information that would be needed for the parking, lighting and landscaping plans in addition to other necessary discussion. “We need to meet and go over this” said Mr. Harrington. Chair Monahon replied “so we will close the meeting for the purpose of further discussion.” Mr. Clark asked “when is this discussion going to happen?” Ms. Vann replied “in a Planning Board meeting, we have 60 days. There is a lot of work we need to do as required by the applicant and the Stewarts.” She cited the questions revolving around the location and content of the buffer and the ownership of the fence as specific issues.

Mr. Branon qualified that the Public Hearing was being postponed (or tabled) for the purpose of more in-depth discussion by the members. He asked “is it continued to a date specific?” The members briefly discussed the matter and decided to continue this to Wednesday, August 29, 2012 at 7:00 p.m.

In closing Mr. Harrington looked to the audience and said “I don’t know if you are talking, but I highly encourage the parties to try to work together. If you could it would be very helpful.” Mr. Stewart replied “I think they burned that bridge when they cut the vegetation in the buffer.” Mr. Harrington noted “OK, alright, I like to try to bring people together.”

The meeting adjourned at 7:02 p.m.

Respectfully submitted,

Laura Norton  
Administrative Assistant