

**FRANKLIN PLANNING BOARD  
PUBLIC HEARING MEETING**

**July 25, 2018**

**7:00 p.m.**

**Minutes**

**Call to Order:** 07:00 PM

☐ Pledge of Allegiance.

☐ Roll Call: Present--Donna Tully, David Testerman, Ted Starkweather, Chairman David Liberatore, Mayor Tony Giunta, Scott Clarenbach, Jo Brown, Tim Flaherty & Planning Director Richard Lewis

Absent—Brian Sullivan, Christine Dzujna, Tim Stangroom & Mike Freeman

Donna Tully will vote in place of Michael Freeman

☐ Approval of June 27, 2018 Planning Board Minutes. Members Starkweather/Brown motioned/seconded approval of the minutes. There was no discussion or amendments.

**The motioned passed by a vote 8-0-1** [Mayor Giunta abstained as he was not present at that meeting].

**Old Business:** None

**New Business:**

- ☐ **P 18-05:** Dennis Day is seeking Site Plan approval to convert an auto service station to a take-out restaurant with outdoor seating. The property is at 150 South Main Street [Map/Lot 098-068-00, Map Sheet 07] in the B-1 (Low density business and commercial) zoning district.

Members Flaherty/Starkweather motioned/seconded acceptance of the application as complete.

**Motion was approved by a vote of 8-0-0.**

Dennis Day addressed the board stating that he wished to open a seasonal seafood restaurant at his one-time automotive garage. Member Brown asked if the handicap porta-potty was to be installed for just the first season until the building could be reconfigured. Mr. Day stated that he would like to get that straightened out before he opened, if possible. There isn't quite enough room in the existing bathroom by about half an inch to meet code. He is hoping the city will grant him that half inch to make it handicap accessible [railings, etc.]. That bathroom would be for the public, the second bathroom would be for employees. If that was acceptable he wouldn't need a porta-potty.

Planner Lewis added that he, Mr. Day and Code Officer Reale have had discussions regarding the bathroom situation. Captain Reale is the authority having jurisdiction and he has a degree of flexibility and once he has a more detailed, to scale drawing from the applicant, there is a good chance that this can be resolved so the porta-potty would not be necessary. Planner Lewis also mentioned that this is a

developed site that is fully paved. There may be a need to refresh the parking stripes, and the picnic table area can be fenced off from the parking for safety reasons. The interior fit-up of the kitchen needs to go through the State design criteria. Once he gets the State permit, he would be able to start construction and the city could be signing off concurrently with the food service license.

Member Flaherty asked who determines the bathroom deficiency, and was informed that the fire department makes that decision. He also pointed out a couple typos in the draft decision for approval which were noted and will be changed. Planner Lewis said that condition 2 under Decision and Conditions would be eliminated if the indoor handicap bathroom is approved by the Code Officer.

Member Starkweather asked if the door to the handicap bathroom is of sufficient width. He was informed that Captain Reale will be making an assessment regarding the accessibility criteria. Mr. Day shouldn't have to come back to Planning for a final check.

Public comment: John Mathison, 128 South Main Street. He had a list of questions: 1) How will this affect the property values? His real estate broker said it would decrease property values by 10-20%. 2) Signage: is the owner looking for a variance on existing signage (refer to Franklin Zoning Ordinance 305-204, lines 7 & 8)? 3) NH Title 64 Planning and Zoning Chapter section 3 'Parking'. 4) Will fences be put up and have property lines been surveyed for the placement of the fence? It needs to be effectively screened from the sides. 5) Dumpster placement: will measures be taken to control odors and pests, potential runoff from dumpster areas? 6) Noise concerns: will outside speakers be used to inform patrons when orders are ready? (Chapter 215-4 Unlawful use of equipment to amplify sound); 7) What about traffic concerns? There is a bus stops right in front of the proposed restaurant and a cross walk comes across the property; what about abutters' access and egress from their driveways? The opening of the Elks has greatly increased the traffic and parking issues; 8) What about odors coming from exhaust vents? 9) 674-27 talks about the prohibition of noise, vibration, and odors that are offensive to neighboring properties. 10) He didn't get notified of this until Friday. RSA451-c (1) section 7 dictates one week prior to public hearing regarding the site. Attempted delivery was on Friday, and owner was away for the weekend and didn't get the notice until Monday. Mr. Mathison stated that he was deeply concerned with the potential of this business affecting their property both monetarily and aesthetically.

Planner Lewis said that there were no details regarding signage, but it would have to conform to zoning ordinance, it is a business zone and the site formerly housed automotive repair and sales. Regarding the noise issue, the owner hasn't stated the hours of operations, but there could be some mechanism to deal with that. In such places as this, it is usual that the person at the window just calls out the patron's name and doesn't use a speaker. The venting equipment will need to satisfy restaurant code criteria. The dumpster might be placed in the parking area on left (north) side of building. As far as screening is concerned, it is an existing site used many years for commercial activity. There is vegetation on the south side and a little on the north side as well. If the board felt that additional screening is necessary, that can be discussed. The only fencing suggested was near the seating area to isolate it from the parking.

Mr. Day added that he plans on removing the existing guard rail barrier and putting a three foot high wood fence around the whole property.

Julie Matheson said that she and her husband live directly north of the site. She argued that a three foot high fence wouldn't help with the smell of seafood that will attract rodents and other pests. They would at least like to have a taller fence to keep out not only the vermin, but the light, noise, and litter attributed to the business. She said it will affect their home and their enjoyment of their home that they bought three years ago. She is also concerned with how much parking will occur along the street since the parking lot isn't that big.

Member Tully asked about proposed hours. Mr. Day said he was considering 11 am to 9 pm five days a week.

Member Testerman added that this type of use change is not so unusual and mentioned that the Ben & Jerry's in Vermont was just such an example.

John Cloughey at 160 S. Main said that he wouldn't mind a Ben & Jerry's, but he doesn't want to live next to a seafood restaurant. He and his wife moved here two years ago and are hoping to start a family. All of their bedrooms face the proposed site and he is concerned about a nine o'clock closing keeping a new baby awake. He too goes to bed early since he is on the road by 3 am each morning for work. He understands that they live in a business area and a car dealership would be fine, but not a restaurant. He has major concerns over light pollution, noise, trash and people hanging around the seating area well after closing hours. He is concerned for his family's safety especially when he is away at work.

Courtney Cloughey mentioned that the current fence allows a lot of trash to get into their yard even though the site is currently vacant. The new restaurant would generate a lot more trash. A larger fence that went to the ground would help with that issue. She reiterated what her husband had said about starting a family and the issues with having a business open late at night. She was concerned about the amount of street parking increasing with the establishment of the business. The Elks have generated a lot more traffic and parking issues which will only get worse during the school year.

Member Brown mentioned that a high fence around the dumpster could help with the one issue. She also expressed concern about the fact that the site is the school bus stop and that there are a lot of kids on both sides of the street. Would a higher fence block the kids' view of the bus?

Mr. Day said it would be nice to have a different pickup point for the bus.

Chairman Liberatore said that if a business was there the bus stop would have to be moved and that could be part of the site plan approval. He added that in his experience as a realtor, he has never experienced the drop in home values as described by Mr. Mathison. It is a business zone and businesses are there. He suggested that the site would look better having an operating business versus a vacant lot.

John Mathison said it might look better, but it doesn't smell better. They spend a good deal of time enjoying their backyard and he doesn't want to have a smelly dumpster next to his property.

Mrs. Mathison added that they moved in before this happened and that this will greatly influence their lives. A restaurant is a whole other ball game.

Since Member Dzujna was out of town, Planner Lewis read out some of her comments, the first being the increase in traffic due to the Elks Club being open. She also asked about the disposal of grease. Mr. Lewis said that one of the permits that will be required is an industrial discharge permit through

the Winnepesaukee River Basin Program, the wastewater plant at the end of River Street. Member Dzujna wrote about the problem with the school bus drop off and pick up. Mr. Lewis reminded the public that it is a business zone and added that some of Mr. Day's hours would be in summer when the school buses aren't running although there will likely be some overlap on either end.

Mr. Lewis suggested that conditions be added such as screening for the dumpster, a design submission for downcast exterior lighting, and fencing. If board felt there were enough outstanding issues this hearing could be continued to the August 22<sup>nd</sup> meeting. Mr. Day is hoping to open in 2019 so there is not a huge rush. The interior fit-up could be done during the winter.

Chairman Liberatore said that he would like to see Mr. Day address some of these issues with a better plan. He suggested Mr. Day talk with the dumpster people and get designs for downcast lighting and fencing type and height.

Member Brown added that signage also be addressed, not neon, perhaps tombstone signs lower to the ground.

Member Starkweather added that they needed a better plan with better measurements. Perhaps the dumpster could be placed on a concrete pad with a lip around it to prevent leakage. He also suggested that Mr. Day check into the different types of filter/exhaust systems that reduce the smell.

Member Testerman motioned for a continuance to August 22<sup>nd</sup> at 7 pm. This was seconded by Member Brown. Mayor Giunta asked if Mr. Day understood what the board was asking of him and he acknowledged that he did. Planner Lewis added that he would meet with the applicant. **By a vote of 8-0-0 the motion passed.**

- ❑ **P18-07:** East Coast Rent a Fence of NE, LLC is seeking Site Plan approval to construct a 30 ft. by 50 ft. building on Range Road [Map/Lot 077-420-00, Map Sheet M6] in the I-1 (Industrial) zoning district.

Owner and Applicant David Whitehouse gave an overview of his proposal to construct a 1500 sq. ft. building to allow for office space and a work area to do fence assembly. His company provides temporary fences for construction sites.

Member Testerman asked if he was building this structure on the pad. He also asked if constructing a building was part of the requirement for purchase of the property.

Mr. Whitehouse said that was the case. Planner Lewis clarified that for businesses with outside storage it is necessary for there to be a building. The 1500 square feet size is the minimum.

Member Starkweather asked if the property off Lawson Avenue that had at one time been proposed for a small subdivision had already been subdivided from Mr. Whitehouse's property on Range Road.

Mr. Whitehouse answered that it had already been subdivided. He added that he has spoken with building inspector and he is okay with what Mr. Whitehouse was proposing to do.

Chairman Liberatore asked for a motion to accept the application as complete. Member Flaherty & Brown made and seconded that motion. **By a vote of 8-0-0 the motion was approved.**

There was no public comment and the Member Clarenbach motioned to approve the application with Member Starkweather seconding. **The motion passed by a vote of 8-0-0.**

- ❑ **P 18-06:** 15 Tannery Street LLC is seeking Site Plan and Special Use Permit approvals to establish a mixed use [motor vehicle oriented businesses, and light industrial] commercial center at 15 Tannery Street [Map/Lot 097-072-00, Map Sheet M7] in the B-1 (Low density business and commercial) zoning district.

Mayor Giunta thanked Mr. Pearlman for coming forward with his plan and investing in Franklin. The Mayor then recused himself since he is employed by Nobis Engineering

Member Tully chose to recuse herself as well since she wished to speak as a member of the public. She also mentioned that she just received her packet. Other members of the Board indicated that they received their packets the day after they were mailed out. Member Clarenbach suggested that the mailing schedule be adjusted since there were abutters in the previous hearing that indicated that they didn't receive their certified notices until a couple of days before tonight's meeting. Planner Lewis said that per state statute all abutters must be notified 10 days before the hearing so we mailed them out via certified mail 12 days ahead.

Chris Nadeau from Nobis Engineering introduced Rob Pearlman, the property owner before giving a description of the existing 1.8 acre site which was previously used by a well drilling company. The site has fallen into disrepair over the years. The existing site has a 1500 square foot garage where the welders parked their rig, as well as a 3400 square foot building which is falling in on itself. Mr. Pearlman is proposing to revitalize the site and bring his three existing businesses to Franklin. He will be refurbishing the two existing buildings and adding 3300 square feet to the existing garage, which will add three or four new car bays. He will be also be adding a 3750 sq. ft. storage building on the back side of the property. The property is surrounded on three sides by city property. Some of the improvements on the site will include three storage areas for 3 connex boxes, added paved parking for twenty parking spaces, and improved gravel drives and loading areas for the operational area. The site will be on city water and sewer and will be installing a pump system to pump up to the sewer on Tannery Street. They will be adding some storm water drainage to offset the increased impervious area with a drip edge around one of the buildings and an infiltration pond next to the storage building. They are seeking site plan approval along with two special use permits (light industrial and one for automotive use). They've applied for a shoreland permit from the State of New Hampshire because part of the site falls within the 250 foot setback of the Pemigewasset River.

Member Starkweather asked about the signs at the end of the driveway and the existing pad between two of the buildings. Mr. Pearlman answered that those signs would be upgraded and that the pad was once covered by a wooden shed that had rotted out. It was taken down and it was discovered that the piping was all broken. That will be replaced and the pad will be the foundation for bathrooms and mechanical rooms.

Member Clarenbach asked about the loading dock (designated #3 on the plan), which shows an 18 foot wide driveway to the rear of the building. Mr. Pearlman indicated that it would be removed when they rebuild.

Member Flaherty asked if, given the close proximity to the river, there were any concerns for leakage with any of the business activities being done.

Mr. Pearlman explained that the property has been used for truck repair and maintenance for Daniel's Artesian Wells since the 40s and 50s. The intent is to expand and upgrade the site. There will be a garage to perform repairs on their fleet vehicles. There will also be an addition that will handle the retail sales of a sustainable undercoating made from non-toxic vegetable oils. All repairs will happen inside the building and be following State regulations regarding spill prevention. There will be no floor drains in the building.

Member Starkweather asked about retail car sales. Mr. Pearlman said that they don't anticipate that aspect of the business taking that much space since it is essentially an online business. It is only that the new requirement with the DMV requires a physical address to serve as a license placeholder. There would be very few cars on site. Planner Lewis asked for clarification that there would only be 2-4 vehicles on the site at any one time and Mr. Pearlman said that was the case. Member Starkweather also asked if the sign on the side of the wood building was to satisfy DMV requirements. Mr. Pearlman answered that it was and that the letters needed to be 10 inches tall.

Member Brown asked if the general public could come in for the undercoating and received an affirmative answer from Mr. Pearlman who added that a large percentage of their business is undercoating of school buses and fleet cars. Mr. Pearlman said the product is completely non-toxic.

Donna Tully, 276 North Main Street, asked several questions of Mr. Pearlman. Mainly she wished for a more detailed description of the types of businesses that would be operating there, the hours of operation, the amount of traffic and when it would be the heaviest, any overnight lights and any signage that might be lighted, and lastly any issues with odors.

Mr. Pearlman said that the sign light would be on a timer to go off an hour after dusk. It would have the same footprint as the current sign. They don't intend to have a second shift, so basically it would be open daytime hours with occasional after dinner meetings. There would be no large vehicles coming or going in the night. The undercoating is all mineral based and the odor is minimal.

Ms. Tully asked about zoning requirements and Mr. Lewis told her that the site is zoned for business. One of the businesses is the undercoating; another is the auto sales, a retail component for auto repairs, and parts distribution for tank inspections and repairs at such places as Circle K. The brick building will be for offices for some of their operations. In the back there will be room for storage of parts and the inspectors' tools. The building out back will be for storage for equipment, landscaping, painting, and siding materials for other business owned by the applicant.

Ms. Tully asked if the only Special Use Permit would be for the automotive part of the business and the light industrial. Are there set hours of operation for the zoning district? Ms. Tully said she doesn't want to see that the business is expanding in the future which could necessitate adding a second shift. Mr. Lewis remarked that that couldn't be guaranteed, the city is limited in how much control it would enforce regarding hours of operations, but that he could check on that.

Chairman Liberatore brought the discussion back to the Board, asking for a motion to accept the application. Member Starkweather made the motion to accept the site plan, seconded by Member Brown. No discussion followed and **the motion passed by a vote of 6-0-0.**

Planner Lewis said he would check the city code and work with the applicant regarding the hours of operation which could then be added as a condition of the use and occupancy. Mr. Pearlman reiterated that if there was any work being done after hours it would be inside the building and it wouldn't bother the neighborhood.

Ms. Tully said she was more concerned with the morning hours.

Member Starkweather made a motion to approve the site plan and special use application. This was seconded by Member Clarenbach. **The motion passed 6-0-0.**

**Public Comment:** Member Clarenbach made a point of order that a motion to accept the application prior to any comments by the applicant or the public. If the application wasn't considered as complete would it even appear on the agenda? Planner Lewis said he tries to work with the applicant before the hearing so that typically his memo to the board would address the issue of whether the application was sufficiently complete. If the Board felt that the application wasn't complete they could still accept it, but with the caveat that the hearing be continued until the next meeting.

Mr. Lewis then added that no matter how simple an application may sound there can be unexpected consequences. The proposed seafood restaurant is in the business district and the Planning Board would be in a very precarious situation if they started denying site plan applications for properties in business zones because it offends abutting home owners. Member Tully said that she thought the abutters had some valid points regarding traffic and light and odor pollution. Mayor Giunta said that the city needs to encourage industry and businesses to come back and that it would be wrong to try to take away a property owner's right to open a business in a business district just because there are some home owners who object. Obviously, Mr. Day's site plan needs to be fine tuned. Member Tully added that she thought that a lot of the home owners' frustration was due to the added traffic from the Elks. She agrees that 'yes, this is a permitted use,' but asked what could be done for the people around there to make it better for them.

Member Starkweather suggested that the City Council might act on moving the crosswalk to the other side of Depot Street.

**Other Business:** None

**Planner's Update:** None

**Adjournment:** A motion to adjourn was made by Member Brown, seconded by Member Clarenbach and passed by a vote of 8-0-0.

- The next Planning Board regular meeting is scheduled for August 22, 2018 at 7:00 p.m. and the application dead line date is August 1, 2018.