

MINUTES
PLANNING BOARD
April 5, 2023 7:00pm
In-person/Zoom

Present: Deirdre Daley (Chair), Josh Muhonen (Vice Chair), Shawn Talbot (Ex-Officio) - in person, Craig Smeeth- in person and recused himself for the Silver Scone Hearing as he attended as a citizen/abutter (sat with the public), Tim Somero, Liz Freeman-via Zoom and recused herself for the Silver Scone Hearing as she attended as a citizen/abutter, Lou Guarino- via Zoom, Nichole Talbot-in person, Jennifer Minckler- in person.

Citizens in attendance – John Schaumlöffel- in person , Sam Benedict- in person, Louise Delpapa-in person, Kathleen Sheldon- in person, Robert A. Fasanella (Representative for Silver Scone)-in person, Abigail Fasanella-in person, Nancy Cark (Attorney for abutters) – in person, Ray Holmes- in person, Jody Holmes- via Zoom, Ray Holmes(SR)- via zoom, Stan Sabierek-in person, Ann Marie Fournier-in person, Robert Fournier-in person, Abigail Fasanella –in person, Sharin Smeeth-via Zoom, Marilyn Stowe-via Zoom, Chris Allen-via Zoom, John Cook-in person, Christopher O’Leary- in person. Russ Huntley- in person, Rowan Wilson (Reporter of Monadnock Ledger) – in person.

Chair Deirdre took Roll Call and asked Lou Guarino to sit in for vacancy of member.

Selectmen/Chair/Land Use Report: Selectman Talbot thanked the community for passing the budget. The numbers were higher than typical but still lower based on the number of registered voters. The Land Use Clerk mentioned the upcoming trainings. Chair Deidre mentioned that Craig Smeeth was elected to the Planning Board and Nancy Clark was a write in. Doug Sharp was a write in but declined to be on the Planning Board. Nichole Talbot has become a member. Nancy Clark has resigned as she could sit on the Planning Board but could not work in the capacity of an Attorney for her clients in a case before the Planning Board. Nancy provided a very nice resignation letter to the Planning Board but hopes in the future she may be able to be an alternate on the Planning Board. Chair Deidre suggested conducting another “Meet the Planning Board” to see who may be interested in being an alternate as there were over 60 write ins. There is still a one 2 year term vacant. Discussion of when to hold the “Meet the Planning Board” continued. It was determined to be held on April 26, 2023 at 7:00PM. (See end of these minutes for change in this decision) There was discussion of the agenda and where to fit in the upcoming hearings. The agenda for 4/19/2023 and May 3, 2023 will be revised.

Minutes of March 15, 2023: Motion to accept the minutes as written by Shawn. Motion seconded by Lou. Roll Call vote. Motion Carries.

Planning Board Bylaws: Co-Chair Josh reviewed a condensed version of the Planning Board Bylaws.

Conceptual Consultation: Russell Huntley for Brent Warnke - 457 Page Hill Road Map 5B Lot 1–A (Mr. Huntley stated verbally it is 5A Lot 1-A.). Russell Huntley addressed the Planning Board that he is a Wetlands Scientist and septic designer. This is to be a two lot subdivision with a back lot. Approximately 2.5 acres would remain in the front and about 9.5 acres in the back lot. On the North side of the property, there is a Class VI road. His concern is the driveway and strip of land that front Page Hill Road. There are steep spots and flat spots and it would be an expensive driveway to construct. He questioned if there is the ability to put a driveway on a Class VI road which can easily be driven on. The building spot will be at the top of the hill in the rear of the lot where the Class country road abuts the property. This is 12 Acres on Page Hill Road. Chair Deidre presented the topography map for this property on the screen. Chair Deidre stated that additional information on the old country road would be needed since building on a Class VI road generally not allowed. Selectman Talbot also advised that you cannot have a driveway access either. Russell Huntley questioned frontage on Page Hill Road. Chair Deidre questioned expense to build a driveway versus potentially improving an equally long road. Clarification if the road is a Class VI road a private road would also need clarification?

Elizabeth Freeman stated that she believes that if you have 50 feet of frontage to a backlot on a Class V road, you were not required to use that access that you could use from another location. She believes that is in the Subdivision regulations. Chair Deidre asked for that to be researched as well as the status of the road being private or Class VI and the history of the road since it is not shown on the GIS map as any kind of a town road. She also stated that if the Planning Board allowed a subdivision there would still be a question if the Select Board allow building on a Class VI road. Liz advised there is frontage on a Class V road so it should be a buildable lot. Josh read the subdivision

regulations for backlots page 11 item D. Liz advised if Class VI it is not maintained, the Town owns it but does not maintain it so therefore Selectman would need to give permission to the owner to maintain it. She gave an example of Old Country Road which is both Class V and V (the owner maintains the Class VI to get to Class V). Talbot advised this came up at the Road Committee meeting. The Town does plow this but it is getting overgrown and is getting unsafe to send plows there. He advised that Peter stated it is a scenic road designation.

Tim asked Russell Huntley about the conceptual split of the land for the subdivision. Russell Huntley advised that the front part would stay as an L of about 2 acres, the north side would be an access strip, the house and wetlands are too close to the Mass Border to put strip on that end. The back lot would be a pork chop. If the Class 6 is not a viable alternative, he also asked if there are any issues with construction to build this driveway? Chair Deidre suggested to look at options since there are certain slopes that cannot be built on as listed in the Subdivision regulations. Chair Deidre advised when the application is submitted, the Engineer will look at it and be available for a consultation. The Land Use Clerk suggested after Russell Huntley left, the option for a shared driveway and will reach out to him by email with that suggestion.

7:45 (began at 8:08pm) - Public Hearing- Site Plan Review for Silver Scone-Jane Elwell, Map 11 Lot 128 99 River Road, New Ipswich NH 03071-

Chair Deidre advised that there have been some things added to the Dropbox which are:

*ADA update a primer for Small Business
Gravel Parking Lots listing
Site Plan Review Proposed Conditions
Four waiver requests
Updated parking area map.
Large scale parking revisions map
Handicapped staff parking and photographs
A write up of how the parking is proposed
A letter from Monadnock Conservancy regarding snow removal and gravel
Revised parking off of Currier Road*

Chair Deidre proposes the Planning Board review the Summary of Comments provided in the minutes of the last meeting, as discussed at the end of the last meeting so that the group can move forward as a Planning Board to make the decisions needed. Bob Fasanella asked to present on behalf of the Applicant the changes in plans, parking as well as the revised waivers and also at some point would like to go over the proposed conditions. Chair Deidre appreciates that and advised that yes, at some point there will be an opportunity to do that this evening but stated that as the Board goes over these topics and reviews the information in Dropbox that the members have looked at the contents with the exception of Nichole. The Planning Board members may have questions regarding new material or clarifications, but instead of everyone telling members what to look at and anticipating the questions, the Board will start with topics raised so far. Bob stated he has one other comment to make about proposed topics. He said he feel some of the topics are not appropriate jurisdiction for the Planning Board. Chair Deidre responded that she asks that he let the Board get to its work and some of Bob's concerns may be addressed as the group proceeds. The Planning Board has been fairly liberal on comments and quite a bit of ground will be covered in our data review. Bob said there are topics brought up by the abutters that should have been addressed by the ZBA. Chair Deidre said the intention of the Board to allow people have their say. The Board been very liberal in allowing public input and has been very busy listening to people tell us how to act, but the Board has not been able to delve into comments made over the last month. She also noted there was a summary of topics where other groups had jurisdictions that was noted in our last set of minutes.

In waiting for Land Use Clerk to make copies of Summary topics for all member, Chair Deidre reviewed the list of 4 new waivers which are IV.B.18, IV.B.14, IV.A.2 and IV.A.5. The things needed for the waivers are:

- *The waivers needed to be submitted individually and in writing, what is the waiver being requested for and is it for completeness or design requirements. (All 4 waivers appear to be for completeness and were previously heard. A more thorough waiver being submitted.)*
- *Identify the specific Article of the regulation for which waiver requested and why needed and why it should be granted- unnecessary hardship and/or circumstances specific to the site plan or the land,*
- *Identify if it has been reviewed by Town Counsel or Engineer. Waiver for technical issue must be supported by Engineer which is not relevant as completeness is prior to (technical) discussion yet. (Chair Deidre is going in order of the waiver numbers).*

Nancy Clark stated she has objections to the waivers.

(At this point sound was lost on Zoom but Tim was just searching for the documents of waivers in Dropbox. Once sound was returned Tim showed first waiver on screen)

Waivers were individually reviewed by the Planning Board and shown on the screen for a vote.

Waiver IV.A.2 – Chair Deidre read the following: waiver was needed either related to unnecessary hardship or for specific circumstances with the land. The last paragraph talks of hardship and the concepts were addressed by the Engineer and he had no issue with these. For this waiver, technically it is name of address of applicant preparing the map, size of maps and amount of maps that must be submitted. Prepared by a professional Engineer or Firm. Motion to accept the waiver made by Josh and seconded by Selectman Talbot. Roll Call vote. Motion carries.

Waiver IV.A.5- Chair Deidre read the following: waiver relates to plans that document the shape, size, height and location of existing structures and all structures within 200 feet of the property. For completeness of the application, the building and land have existed for 70 years according to this, plans have sufficient detail to meet the needs of the Board, the dimension of the buildings will not be changed and there is, on page 2, for hardship regarding cost for doing the plans. Chair Deidre asked if the Board had all of the things it needed to make a decision. Josh made a motion to accept this waiver. Selectman Talbot seconded the motion. Roll Call vote. Motion carries.

Waiver IV.B-14 - Chair Deidre read the following: waiver relates to having storm water drainage plan, existing and proposed methods of handling storm water runoff, direction and flow of the runoff with arrows, location, elevation, catch basin, drywells, drainage, ditches and swales and engineering calculations. For this waiver again, it was for application completeness, related to checklist item 2 which she has not said on the others. There was a prior use of the parking area. Would this be contrary to the spirit and the intent of the regulations? Again, these are the grounds that the Board can accept the waivers. The unnecessary hardship, again for a small business was being requested. There was a site map that showed some of the conditions of the existing parking area- the elevations, erosion sedimentation measures, the silt fencing and things like that were listed. Again, the Board is looking backwards to see if it has the information to have the discussion and evaluate this application. Josh made a motion to accept the waiver of IV.B.14. Selectman Talbot seconded the motion. Roll Call vote. Motion carries.

Waiver IV.B-18- Chair Deidre advised this waiver looks at soil erosion control plans, maps, provisions of the subdivision regulations for erosion control and sedimentation control plans. Again, for completeness, all four were for completeness.- All the waivers noted primarily undue hardship, and longstanding land use. Several of these said it could be both hardship and conditions of the land. There were plans of the limited portion of the property under consideration that already contained a lot of the information the applicant needed to submit. When the Planning Board did a site visit, there was not any runoff or erosion there, there were puddles in early Feb but no runoff was noted. The ground was squishy soft out there. Josh made a motion to accept the waiver IV.B-18. Selectman Talbot seconded the motion. Roll call vote. Motion carries.

Chair Deidre reviewed the next item on the list which is engineered plans – Public comments that had been included that formal engineered plans are needed for the application. Plans that were submitted were with colored pen markings, which is insufficient for the Planning Board to make decisions about the fit of the parking lot, size and space for maneuvering. Meridian did an existing plan and there was a note that the application may not have precise boundary surveys which may impact the accuracy of the plans, the recorded conservation easement plans show the access of the proposed parking area as a 6' logging road, at best general parking area can be described as a staging area for logging operations, a gravel upgrade would help the parking lot, questions about snow storage, question about the number of parking spaces there needed to be. There was also a question about the need for parking for those serving, question about the grade on the parking area, question on handicap parking, and question of ZBA condition that there be no street parking. That is it for that category.

The group also reviewed materials now in Dropbox that can be discussed that may relate to these topics, such as the new parking structure or new proposed parking plan, the increase in size of parking lot and number of spaces since the last time the Planning Board met, with the updated handicap parking proposal. The parking for the servers there is a change in that in Dropbox and a letter from Conservancy on gravel and snow storage and that those will be allowed. Chair Deidre opened discussion on the topics

Bob Fasanella asked if he could present changes. Chair Deidre asked that the Planning Board lead this. Selectman Talbot requested going through the list and go one by one as some have already been answered so could be checked off the list. Chair Deidre suggested clearing some items as feasible. Chair Deidre stated that she feels formal engineered plans may be needed for the parking area. The Board has a waiver before us but was for completeness and not necessarily this portion that we are discussing and requested that we go back to the engineered plans. She notes the Board likely need to come back to that item.

Regarding plans being submitted in color pen markings which is insufficient for the Planning Board to make decisions- Selectman Talbot advised that some has been corrected and thinks marker does not matter and feels it is a non-issue. Tim has not had time to review the new information but feels it is not a good look, but agrees occasionally it can be used. It doesn't indicate attention to detail. He would like an opportunity to review. Chair Deidre asked that Tim pull those up. Chair Deidre advised that two additional spaces have been added to the plan. Bob Fasanella interjected stating that the parking spaces are to the north and there are 18 parking spaces instead of 16. Tim asked where the engineered stamp is. Chair Deidre advised that ideally our guidance is stamped plans are optimal, but NHMA noted there are occasions where landowners may submit these type of plans. The map is question was an existing Meridian plan with modifications and is only part of the property (thus the boundary comment). It is 3 acres out of the 36 acres. Chair Deidre believes something more may be needed about how the parking lot is going to be graded, done and leveled. Co-Chair Josh advised with gravel there will be an elevation

change and agreed to more exact detail being helpful. Chair Deidre advised that while the plans and application have been modified since first submitted which could be considered applicant responsiveness. If an Engineer was routinely redrafting, it would be expensive. Chair Deidre would like to have more detail in the plans and how dug out, additional swales, ditches, the end grade, etc.

Bob Fasanella interjected by asking to address some of the changes so the Board knows why the changes are made. He advised they are being responsive to the abutters and neighbors as they advised that the parking is not sufficient for over flow for staff. They addressed that and added parking spaces. The rear parking lot increased from 16 to 18 spaces which increased the dimension of that parking area. It is now 72x 90 x 60 x 70. They also increased the amount of parking spaces in the front parking area that abuts River road to address criticism of the handicapped parking. It was a criticism that handicapped parking should not be on an unpaved surface on the right side of the house, so the plans now show handicap parking directly in front of the house on the driveway and made that space 16 x 18 which is more than the parking, for example than the parking out front of the town hall which is 11 x 16. This more than accommodates. The parking slope is generally a little more than 2% for the handicap spot. The handicap parking at Town Hall is 6%. The proposed parking is less steep than Town Hall parking. They have also increased the total amount of parking spaces in the front to accommodate 5 parking spaces- 2 in the garage and 2 to the east side of the driveway, so there would be a total of 5 additional parking spaces in the front instead of 1 handicapped parking space. That was to address the concerns about blocking the handicap parking as well as taking overflow parking off of Currier and River Road. Those are the basic changes and there is also shown on the parking plan, a ramp providing access for the side door to the handicap facility and that ramp is compliant by ADA requirements. If you look at the Town Hall ramp that doesn't even comply with ADA requirements. It is too steep and too narrow. This plan complies.

Nancy Clark interjected stating she has objections to the parking in the front of the house. Chair Deidre advised that public comment would come later. Bob Fasanella again interjected stating another thing he would like to add, he would like to discuss the slope. The parking area slope is approximately 6% before any grading. With removal of stumps in the back north corner of the parking lot, that loam can be shifted over to the buffer zone for appropriate planting and the parking lot can be leveled not only by exaction of back rear corner but by adding the grave. Proposed finished slope will be less than 6% if not 4 or 5% if not less. One of the things he submitted to the Board is a matrix showing 14 other gravel drives and parking lots in town and if you look at that, you will see of the 14 that exist, 8 are larger than this proposed parking lot. Chair Deidre interrupted Bob to advise him to stop detailed comments - as the Board wanted to work though prior comments.

Lou Guarino stated the Board has spent hours discussing the parking lot but Monadnock Conservancy has stated in the letter that they can reserve the right to refuse access anytime. Chair Deidre said that is their prerogative and they do their own monitoring. This is an agreement between the applicant and the conservancy not the Planning Board and it is in the applicant's best interest to follow the Conservancy guidance. Chair Deidre mentioned when all this is said and done and if this passes, it would be helpful to have procedures to guide enforcement. Selectman Talbot advised that there is already an agreement from the ZBA and already an agreement with the Monadnock Conservancy. He states he does not believe it is the Planning Boards job to make the applicant create policy for themselves. It has already been imposed on them by these other entities that they are working with. Chair Deidre then sought clarification of Selectman Talbot that if there is a need for enforcement that he feels it is clear that there is no parking on the road related to a Tea Party and however the applicant chooses to do that is up to them. Selectman Talbot agreed and advised that is between ZBA and revoking approval. Chair Deidre advised that site plan reviews can also be revoked. Selectman Talbot advised that if this is passed, it will be regulated by many entities.

Selectman Talbot mentioned the objection about the driveway and parking lot being muddy at the last meeting and the need for gravel, of which the Conservancy accepted. The Conservancy is willing to work with the applicant and mentioned the current letter in which they did advise the same statement of authority over it and action could be taken at any time.

Selectman Talbot stated he would like to get past the three sheets. *He said on the second point, there is not any problem specific to colored plans so he would like to check that off as some of the other points have already been addressed.*

The next item 3, Selectman Talbot advised that the Board went out and did measurements, and checked buffers, finding the general dimensions accurate. The adjustments submitted recently didn't get any closer to the wetlands. All were in favor of moving past that item. Chair Deidre asked is the next item was snow storage. Selectman Talbot stated yes and read that the proposed plan show snow storage (especially on North side) that may infringe on

Conservation land or not be consistent with conservancy agreement/s. Selectman Talbot advised that the Conservancy in the last letter are fine with this.

Item 4- Contention that for 50 people-need 18 spaces instead of 17 since not allowed to count handicapped space as non-handicapped use. This has been addressed and adjusted with the latest plans.

Item 5- The applicant needs to account for parking for those helping serve. This has been adjusted in the latest plans.

Item 6- There is a 10% grade on diagonal of parking area and more information is needed on erosion control.

There are a number of perspectives on grading from 6-10% and the Board has questions on grading. There is more information needed on this.

Item 7- The front driveway that is proposed for handicap parking is not paved (and is only suitable for one car based on size of handicap parking requirements). This has been addressed in the latest plans.

Item 8- One of the conditions of the ZBA approval was that no street parking is allowed. This Board will not counter that decision and it will be an additional condition of any decision

Item 9 under Facilities- One of the 2 baths viewed may not be handicap compliant. New bathroom may not be set up with appropriate space/fixtures or sink access if it is for use by individuals requiring a handicap ready facility.

Procedurally, this would be handled by building department/code enforcement to determine compliance and it would also be made a potential condition.

Item 10-General Environment-

- The use is not consistent with the master plan. ZBA spent quite a bit of time on this and granted variance
- The noise can be disturbing, a neighbor having 50 people for a special event once in a while is different from every weekend. The Board heard that it is not every weekend and will be within 6 hour window and the ZBA has approved that location for this purpose. There are noise ordinances to help with consideration
- One neighbor can view- Chair Deidre asked to come back to this one.
- The parking lot would disturb the beauty of a scenic road- it became a scenic road in 1988 but maintenance request responsibility shifted from the PB to CC in 2021. The parking lot does not specifically impact the designation of a scenic road as it is on the property. The Conservation Commission Chair has not indicated an issue with it.
- Parking lot/driveway disturbance on a scenic road with less/equal impact to unregistered cars along the same street or logs in another yard in the area, or sheds in disrepair- the Planning Board is addressing a current application, not dealing with other properties

A citizen interjected and asked what just happened, did you agree that none of these issues were worth further discussion? Chair Deidre said no, Board members needed the opportunity through prior public comments that have been made as we have not had a chance to talk among ourselves as we cannot talk out of the meeting but we are unable to talk during the meeting with all the public comment. He is not sure of the process. Deidre advised that we as of right now are focusing on prior public comment to get an idea of items that need more consideration and those that may be addressed. The member may consider all items again later. Not all items have to do with the Planning Board nor may the Board have jurisdiction, so may not come back to all of them. Co-chair Josh explained that some additional information was received since these concerns were originally made.

Chair Deidre would like to discuss direction the Planning board is heading and then go into Public Comment.

Discussion to be of engineered plans, grading, erosion control, handicap bathroom, and what the neighbor/s can view. Chair Deidre asked if anyone in the room or online can view from their home and asked what they see. Mr. & Mrs. Fournier said they can see the whole area from the kitchen which is the main room of their house. If using the woods road for the driveway, cars coming out, the headlights point directly to the back of their house. Chair Deidre asked what kind of screening would be helpful. Mr. Fournier said you would have to screen in the front of the driveway. Ray Holmes interrupted and commented that Mr. Fournier discussion of using the woods road to exit the parking lot is incorrect. There is only cars just the very beginning of woods road that and lights would minimally point toward the back of the house where cars exist. Selectman Talbot questioned the hours of operation were restricted to 6 hours? Chair Deidre said restricted to before 6PM. Craig Smeeth stated that he can also see what is going on at the house. Chair Deidre is trying to figure out if there is a way to make this better. Craig said the way it is explained is that people will leave the parking lot and then walk to the home. If they are parking along the road for whatever reason, or have umbrellas, tables, chairs out front when the applicant has the opportunity to host outside, they are right in front of his face. Chair Deidre advised that some of the conditions the ZBA placed on it that things

have to be at the back of the house and more than just people moving in and out. She asked if there is a way to screen what is happening in the parking lot. Marilyn lives on the other side. Their driveway is 20 feet from Jane's driveway and saw people wandering around the property. They can see over their 6 foot fence and can still see and do see umbrellas etc. and people wandering around.

Selectman Talbot stated that this has gone from a safety issue with the cars being parked on the road to now a simple visual issue. He said take away from this being a business, privately, the applicant could have 100 people at their home every weekend and cars could be parked all along the side of the road. The applicant is taking into consideration and making the adjustments requested by the neighbor as best they can. Mr. Fournier questioned 4 x a month for 50 people, specifying it would be every weekend for 4. Selectman Talbot said it is up to 4. Chair Deidre advised that is probably out of our hands if it is less than 4, but 4 would be maximum.

Chair Deidre advised that there will probably be a required as-built plan for certain grade, erosion control be spelled out and probably for just the parking lot and perhaps the trail as well as inspection points pre-gravel and post-gravel. Co-chair Josh was in agreement with finished grades and this did not need to be complex, as is Tim. Chair Deidre states that the letter from Conservancy appears to be gravel on top of the existing road and referred to Lou as an Engineer to ask if that will work. He noted it is feasible.

Tim mentioned the handicapped bathroom. Chair Deidre believe this should be covered in detail by the building inspector/enforcement. The Planning Board needs to know they have a bathroom (or two in this case with one being handicap suitable) and the inspection of the handicap bathroom could be a condition of the site plan review.

Break from 9:31 to 9:39 prior to Public Comment Section

Public hearing 9:39PM: Chair Deidre addressed the audience and advised that there was a procedural objection at the second meeting of Silver Scones and some of what we spoke about today will allow the Chair to begin preparing a response. The Planning Board had not been able to discuss all the specifics as a Board but are resolving some topics as we proceed tonight. Chair Deidre said we still have to complete our formal deliberations. We haven't gotten through all of our topics and technical considerations. Nancy Clark interjected advising she has 12 new procedural objections based on the new documents submitted. She needs to cover one tonight. The Board will try to have public comment every time it meets, but also needs time to work on what we have on the agenda at the next session. Chair Deidre gave 3 minutes to speak for abutters and 5 minutes for Attorneys for about a half an hour, although time can be extended, starting off with Bob, John and Nancy based on order of request to speak. Kathy (Kathleen Sheridan was added to the list of speakers)

Bob Fasanella: He asked to address the chart that was submitted as they were advised by ZBA and the Planning Board that there are no gravel parking lots that are to be as big as Silver Scone. The Matrix shows 14 other gravel parking lots. 8 of them are larger, greater than 18 parking spaces of which none have a storm water control measures, (no catch basins, drains or detention basins on any of them). 11 of them are used year round and full time. Silver Scone will be used 4 times per month. Out of the 14 parking areas, none of them have lines. You have to park in orderly manner. Pickety Place does not have lines. Two of the parking lots have handicap parking signs but 1 does not comply with the slope. More than 8 of these are greater than 6% slope. Warwick Mill is 15% slope.

Chair Deidre reminded the participants that questions and comments should be addressed to the Chair.

John Schaumlöffel: He commented on detailed engineered stamped plans. Because the Board may change over from time to time and the property ownership may change over time. A proper set of detailed engineering plans for all aspects of the project that the Planning Board oversees would be a wise choice for the Board to require.

Another thing he wants to point out is RSA 674:44 which states a site plan review should provide for the harmonious and aesthetically development of the municipality and its environments, and as the Board is going through all of the technical things, mostly what the Board hears about here and read about are technical aspects of this site plan and development and most can be managed easily with decisions, money, actions and evaluation. The difficult part is what is harmonious and aesthetically pleasing. What we have is a residential community with essentially a limited use restaurant/event center type of facility. There is a question whether or not that type of

community or village area that is harmonious with the nature of that community. That is a much more difficult question for the Board but he would encourage the Board to do a deep reading of that RSA.

Nancy Clark: She stated it is unfortunate that she could not raise an issue at the beginning of tonight's meeting because it is a procedural objection and she listened to Chair Deidre requesting that all of us stand down and allow the Planning Board to have deliberations, she was not able to raise this objection and she thinks it is unfortunate for this meeting could have gone a little different if she was able to raise it. At the last meeting, one of the Board members asked a question to her clients of how we got here and the question had an implication that my client's perspective and the filing of the litigation is somehow wrong. And that seeking judicial review of procedures that happened before the town is not in their right and that their actions to make that decision somehow constitute a wrong. She listened to this individual as he repeatedly defended the applicant tonight and moved the meeting along, struck things from a list and argued that the parking lot was no big deal and that these items are trivial. So in light of the question that was asked of my clients in the last meeting, I went back and looked at the rules of New Hampshire for recusal. Superior Court 2.11 is a rule that applies not only to judges in New Hampshire but anyone sitting on a Board at a municipal level that is acting in a quasi-judicial capacity such as this one. The rule, in the applicable part as it relates to Shawn Talbot is that a judge shall disqualify himself or herself in any preceding in which the judges impartiality might reasonably be questioned, including but not limited to the following circumstances: (5) The judge:(b) served in governmental employment, and in such capacity participated personally and substantially as a lawyer or public official concerning the proceeding, or has publicly expressed in such capacity an opinion concerning the merits of the particular matter in controversy.

Nancy wants to focus on particular words as some of that clause does not apply. Shawn Talbot, serves in governmental employment as a member of the Board of Selectman. He served in such capacity where he participated personally as a public official concerning the proceeding that involved the driveway permit which is a critical portion of the site plan review because without the driveway there is no access to the parking lot. Given his statements from the last meeting and this meeting Nancy states she is asking for his recusal. Chair Deidre asked Nancy to connect Shawn's role as Selectman and Ex-officio in the objection. Nancy stated that this rule would apply to any member in this town if they were to rule on a particular aspect of Silver Scone application. Chair Deidre noted she is still trying to see the connection of the two roles. Nancy advised that in this case, Shawn Talbot is acting as a judge in a quasi-judicial capacity. Chair Deidre noted all Board members are quasi-judicial and questioned because he was a judge in another case and a judge in this case that is the conflict. Nancy stated because he was a judge in a governmental employment capacity and that he ruled on another case in favor of the applicant and now, he is raising statements where Nancy is saying his impartiality may be reasonably questioned. Chair Deidre advised there was not a rule she noted that Select Board members cannot serve in both places and noted she did not know if Select members qualify as employees. Shawn noted the Select Board members do receive an honorarium.

John Schaumlöffel asked the Chair to be heard. He stated that the Planning Board regulations state that the Select Board are deciders or enforcers, or their designee the Road Agent in the case of the driveways. Nancy says it doesn't mean anyone that has made a decision on a prior case is impartial but based on Mr. Talbot's comments from the last meeting and this meeting she is arguing to the Chair that he has defended the applicant and Nancy is questioning his impartiality and based on Rule 2.11 he needs to recuse himself. Chair Deidre wants to be clear in her understanding that the perception of moving business along was problematic in combination with other comments, as she felt Shawn was ready to get going on the application. She questioned if Nancy thought that revealed a bias or was it just the hurrying up that she didn't like. The hurrying up was not the only objection she had. Nancy wanted to give the specific example Shawn gave about not having blinds on his house and how it is someone else's problem if they see him in the nude. He was using that as an analogy to argue that Craig and the Fournier's, it is their problem if they can see the parking lot and the tea party. It was inappropriate.

Chair Deidre asked John Schaumlöffel to be a momentary consultant for the Board on recusal, clarifying the first thing would be to ask Shawn if he will recuse himself. John said Josh has the bylaw and they should be reviewed. Josh quoted the bylaws which state: Any member may recuse themselves on a question before the Board. Any member may request disqualification of any other member if there appears to be such a conflict of interest. Deidre stated that is the Bylaws but recusal there is also significant information on the topic within NHMA literature. Shawn stated that he expedited the review because a number of topics were already addressed by other documents or other Board decisions. Chair Deidre read recusal from the Planning Board handbook. Nichole asked Nancy if she is asking him to recuse himself from any Silver Scone tea discussion. Nancy is asking him to recuse himself from the site plan application review process that is tonight through the time a final written decision is issued. Chair Deidre ask Selectman Talbot if he felt it was appropriate to recuse himself. Shawn did not feel he needs to but will honor an up or down vote from the Board itself.

Kathleen Sheldon asked to speak and stated that if he can be impartial that would count for a lot. Chair Deidre deferred to John Schaumlöffel. John Schaumlöffel advised recusal is a difficult topic. Difficult procedurally, personally, legally and it doesn't necessarily bear ill will toward someone if someone recuses themselves or if the Board asks them to recuse themselves. It actually can be a way to protect the institution (the Board and/or the Town) from any future legal action. John has recused himself when he was a member of the Planning Board, yet in another case he was asked by an applicant to recuse himself and refused. The Board didn't bring it up as a vote. John continued in stating that asking the Board to ask a member or ask the member to recuse themselves or the member making a well-considered decision to, or to not recuse themselves are all good things in the planning process. They all have advantages or disadvantages. It is all part of the process. Even though it feels personal, it does not have to be. It is not always personal.

Chair Deidre addressed Kathleen Sheridan to her question of impartiality and stated that the State of New Hampshire takes it pretty seriously if a Board member feels that they can be impartial. If the Board chose to take a vote recommending recusal the ultimate recusal would be up to the Board member. She noted Shawn does not want to make that decision independently. When asked by Chair Deidre, John Schaumlöffel advised the process is to seek a motion. That is his recommendation. Chair Deidre explained that she is calling on John to double check her procedures as he has held the seat as Planning Board Chair previously.

Chair Deidre made motion that Shawn Talbot recuse himself for the remainder of this case. Co-Chair Josh seconded that motion. Further discussion, Shawn Talbot advised that in the three years he has been on the Planning Board his view is to get things moving, not just in this application (although he has expressed that), to also get things going with the Town's best interest at heart, the entire community and the town functioning, as well as to honor applicants and their time. To review things ahead of time, and to move forward not backwards. Tonight, he wanted to check off things that may be outside this Board and have already seen the in Dropbox and spoken on it. Chair Deidre understands his frustration for we have not been able to work on this very much. She appreciated him moving things along, but she thinks there could be an appearance of impropriety doesn't want that risk, but feels there was not any biased intent. Tim voted no, not to recuse. Nichole voted no, Chair Deidre voted yes, Lou Guarino voted yes, Co-Chair Josh voted no. Shawn stated at this time he does not see a reason to recuse himself but will consider it past this meeting.

Chair Deidre requested Nancy Clark continue but asked if it was okay to continue the meeting until 10:30. No one objected. Nancy advised the next item is a procedural objection of how the waivers were handled this evening. The Board considered and accepted those waivers without allowing the abutters to voice our objections to those waivers as an improper procedure, so the Board should not have accepted those waivers before allowing us to be heard.

The second objection is on waivers, it is improper for the Planning Board to accept a third version of the waiver request that is based on the same objections that were raised when the first waivers were submitted. Chair Deidre requested a copy of this in writing. By allowing the applicant three opportunities to submit various waiver requests on the exact same set of objections that were raised during the very first meeting, you are thereby requiring me to give legal advice to Mr. Fasanella, the applicants agent and the applicant herself, so they can respond to those legal objections. That is absolutely impermissible and completely unreasonable. The Board should not even consider a third draft of the waivers because the underlining objections she made has been the same regardless. It was reasonable they be allowed a second opportunity but they failed to satisfy the requirement.

The third objection is that all the waivers are based on same assertions of special condition and financial hardship. This special condition being that Mr. Fasanella's assertion that the parking area has existed for over 70 years. As Nancy has stated repeatedly, this is a completely manufactured argument that does not exist in reality and he has provided this Board with absolutely no evidence whatsoever that any car has ever been parked on this parking area that he says existed. Furthermore, my clients can account for all the time period from present day all the way back to 1973, when a homeowner wrote a letter stating to you all that there was no parking lot that existed on the property as long as she owned the property. There was no indication based on the density of the vegetation and the trees, wetlands and so forth, if there was any parking lot on the property at any time prior to her ownership. This assertion of a special condition based on this parking area existing over 70 years is a blatant lie. Something he can't support. It is not reasonable for this Board to rely on that information. You can't make a finding that a parking lot existed because we haven't given you any evidence of that. The second item is related to financial hardship for unnecessary hardship of the criteria in the waiver. We know from the New Ipswich Zoning Ordinance which reflects New Hampshire law, that financial hardship cannot be used for unnecessary hardship in the context of the variance before the Zoning Board. New Hampshire law is a little bit less clear as it relates to, if you can use financial

hardship as evidence of unnecessary hardship before the Planning Board. She asserted that the actual (type of) Board is irrelevant, so financial hardship should not satisfy unnecessary hardship regardless of what Board is currently hearing the application, but even that argument is not accepted. None of this data supports the notion that she is in financial dire straits and is unable to pay for the documents that are required for the site plan review. This is a matter of the applicant not wanting to pay for the item. That does not meet the standard for unnecessary hardship. So under any of those scenarios that Nancy presented to us the Planning Board cannot accept the waivers that have been presented and they have to be denied.

Chair Deidre suggested to Nancy that it was good to check if anyone else would like to talk.

Chair Deidre asked **Kathy Sheridan** to speak. Kathy spoke of comments made when Bob spoke of the gravel and the other parking areas in Town. She took an hour or so and drove around within 3 or 4 miles of the Silver Scone business and found without even looking for them, 9 other businesses close by that have gravel parking lots. Some of them are very steep. She didn't see handicap parking as that is not what she was looking for. Many have steep grades and in many cases are larger than the one we are talking about here. She used her phone to take picture and submitted to the Land Use Clerk to scan and put into Dropbox and will mail back to her. Kathleen said the pictures are pretty dramatic, when you look at what is being proposed here, this is pretty level, subtle, fitting in with the nature of the woods away from River Road, similar to Pickety Place which is charming and nobody is offended by walking through the woods. She said it is really nice when you think about a tea party and the setting, just natural with the property. The 9 she found are quite opposite. She does not quite understand what the big deal is when you look at the proposal and the rest of the Town.

At 10:20PM Chair Deidre asked Liz Freeman to speak next. Liz is restricting her comments to gravel and drainage because that seems what to be under discussion tonight. Liz stated Dee noted that during the site visit the ground was sort of soft, squishy and there were puddles. That is one of the points, when you did the site visit the ground was not frozen. Liz thinks more important than the surface of the parking is the drainage. Particularly what happens when it is frozen and what happens to the water because it can be very hard to get the snow cleared off on the gravel surface. She has two driveways on her property, one is paved, and one is gravel. The paved one is clear and bare ground and dry the day after a snow storm. The gravel one is a slippery mess for three months out of the year and it gets more sun. The safety of the walkway has not been brought up and the implications of that being gravel and what happens when the gravel surface is frozen and the implications of that.

Chair Deidre called on John Schaumlöffel to speak. He asked a procedural question of if the Board accepted waivers and if the Board voted on the waiver in mass. Chair Deidre responded that they were voted on each one separately tonight.

Chair Deidre called on Nancy Clark to speak again as no persons indicated a desire to speak. Nancy asked where the data came from that comprises the gravel parking area lots that were submitted. Chair Deidre asked Bob Fasanella to respond. He responded that it came from Ray Holmes, Jane Elwell and Kathy Sheldon. Nancy asked how the slope was calculated. He responded that it was calculated by a 4' level and a tape measure. Nancy advised that is a highly unreliable method of calculating slope, and while she is going to get into every single one of these parking lot on the list of graveled businesses in Dropbox but before she does she wants to give a bit of a lesson because apparently Ray, Jane and Kathy do not know what gravel is. The list of 14 parking lots listed as heavy gravel. Gravel is a specific item or term that is a mixture of dirt and rocks, it has specifications and standards of what the size of the rocks need to be, so there are different classifications of gravel but they all include dirt and rocks. There is another surface called recycled asphalt pavement also referred to as RAP, in what she knows in her profession life as Millings. This is road surface scraped up and mechanically chopped into bits, mixed with a petroleum based liquid that is sticky and makes particles sticky when mixed together. It is applied on a prepared surface and cured by the sun. Millings is not gravel.

Kathy interjected the speaker was in error and Chair Deidre advised that Nancy is speaking and asked that she allow the speaker to proceed. Chair Deidre continued noting that the Board may hear opposing positions and may need to review technical experts

Chair Deidre asked Nancy to continue. Nancy stated that a number of these parking lots that are gravel, were put in well before Zoning went into effect in 1987 and so what that means there was no requirement for what a parking lot needed to be so it was pretty much the wild wild west in terms of what anybody wanted to do. Buildings that have parking lots that pre-exist Zoning include Warwick Mills, Community Christian Church, S & S Concrete Floors and Wind Blown camping. Those are the parking lots that are gravel and pre- Zoning and should not be relied upon for

comparison here. When you look at parking lots to compare and are a good example to use for the current situation, we should be looking at business that are of a similar classification of the application. We should not be looking at heavy commercial operation, light industrial uses or shouldn't be looking at situations where the customer has a fundamentally different experience than what is in the current case. So several of these fall into that category. Kitty's Garage has millings for the parking lot, Turnpike Auto Junkyard has millings for the parking lot and the auto repair business that is new on Turnpike Road are all industrial light uses and should not be a fair comparison for the current project. Furthermore, Amazing Flower Farm which is not a year round business and is also an agricultural use and subject to a different site plan review standard than the current application. Also, the Souhegan Country Club is not year round use and is also pre-Zoning so she missed that in the first go-round. The New Ipswich Storage facility does not have a parking lot, as renters pull up to your individual storage facility. Also, that business is not one that an individual consumer is getting a specialized service or product and then leaving the premises. So that leaves Wildflowers gift shop and bakery and Nik's gym. Wildflowers has millings. Nix gym has a gravel parking lot. She would like to get into Nix Gym in some significant detail. She did miss one which is Bruce Ronayne Hamilton Architects which is a minimal home impact business that by definition of Article 13 Decision M of the Zoning ordinance results in no increase of traffic or parking so that also too is not a valid example for this one.

Nancy would like to turn to Nix Gym and she does have documents from the 2004 site plan review and photographs. Chair Deidre interjected and stated that we have come to our time to start finishing. She asked Nancy to finish in less than 10 minutes. Nancy continued to discuss and stated that at the applicant's suggestion of our agreement. Nix Gym is a wonderful example of a parking lot and she visited the gym and also a number of other parking lots when it rained from Friday morning through Saturday afternoon. She went to the Green Center which is not subject to site plan review and also not a good comparison, the parking lot was full of puddles. She provided two pictures. When she drove down to Nix gym there was no water on that parking lot. There were two manholes that are in the center of that lot and she immediately knew that meant they had an excellent storm water management system. Looking at the two manhole covers, she had no idea what they were but knew she had to come and pull the 2004 site plan review so she knew what was included/approved. It includes an underground storm water catch basin. She is going to submit for the record, the minutes of 2004 Planning Board meeting that talks about the conditions for the stamped storm water management plan. It was partially in existence at the time the gentleman bought the property but it was a condition of approval that there were some improvements that needed to be made. Nancy submitted those to the Land Use Clerk. She also noted the file includes a storm water management report that was done by Meridian Land Services coincidentally the same Engineering firm that the current applicant hired. It talks about Nix system in detail what the purpose is, talks about the fact that that system water management plan will prevent gravel from running off onto neighbor's properties, and off of Rte. 124. Even though there are not wetlands on this particular property, even if there were, the storm water management system would prevent runoff from going into the wetlands. This report includes the piping that was used, includes information on the gullies that exist on the sides of RTE. 124, the storm water once it is captured in this catch basin that is shown here, so all of this lies underneath the parking lot. It would not need to be underground and could be above ground but it is highly effective at preventing runoff, erosion and storm water from going into places that you do not want it. This is where Nancy advised she will conclude her remarks but the applicant herself put this property on the list that are good examples to follow so Nancy states they agree.

Chair Deidre stated that on the next scheduled meeting is the 19th of April. There is one further meeting possible to meet the 65 days decision standard. She thinks the Board could get to a decision by the May 3 meeting but needs to confirm. She asked if the members of the Board want to have an additional meeting, or start meetings early or go late. If the Board gets to the 65 days, it can ask the applicant if they agree to extend and if they do not the Board will have to reach a decision that night. The members suggested deferring the "Meet the Planning Board" night and replace it with an additional Board meeting tentatively on April 26, 2023. Road Construction discussion would also be rescheduled for this meeting date

Silver Scone to be continued to a date certain April 19, 2023 at 8:00pm

Old/new business- Voting on Chair and Co-Chair:

Chair Deidre motion to vote on Chair and Co-Chair. Craig seconded motion to continue as Chair Deidre Daley. Chair Deidre asked to amend the motion to include Josh as Vice Chair. Roll Call vote. Motion carried.

Josh motioned to adjourn. Craig seconded it.
Adjourn 10:50PM

Respectfully submitted,
Jennifer Minckler