



***New Gloucester
Planning Board
October 3, 2023, 7:00pm***

**New Gloucester Meetinghouse, 389 Intervale Road
Live Meeting
Agenda**

- I. Call to Order**
Pledge of allegiance
Attendance

- II. Approval of Minutes**
 - A. July 18, 2023 Planning Board Minutes

- III. Old Business**
 - A. Commercial Greenhouse Lewiston Road
Update on the status of the proposal submitted by Scott Rogers for a Commercial Greenhouse operation located at 934 Lewiston Road, Map/Lot 0018-0020, in a Residential B District-1 (RB-1) zoning district.

- IV. Proposed Ordinance Language Amendments**
 - A. Cannabis Ordinance Update
 - B. LD 2003 Ordinance Update
 - C. Amendment to Site Plan Draft Language Discussion
 - D. Other potential ordinance changes for Town Meeting 2024

- V. Adjourn**

Agenda item order is subject to change according to the discretion of the Planning Board, and to accommodate those in attendance of the meeting. If you need special accommodations - please contact the town planner 2 days prior to the meeting: townplanner@newgloucester.com ~ (207) 926-4126 ext. 4. All Meetings are live streamed & recorded and can be viewed on the Town Hall Streams



New Gloucester Planning Board

Minutes of July 18, 2023

New Gloucester Meetinghouse, 389 Intervale Road

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Members Present: Steve Libby, Ryan Tripp, Doug McAtee (Chair), Don Libby, Julie Tajonera, Erik Hargreaves (Vice Chair)

Members Excused: Dan Ellingson

Town Staff: Kathy Tombarelli, Town Planner

Others Present Joe Pugh (representing owner Scott Rogers/Commercial Greenhouse)

Licensed Caregiver (Commercial Greenhouse)

Representative from NGX

Resident/Owner of property on 103 Outlet Road

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|------------------------|-----------|--|
| Business Items: | Site Plan | Commercial Greenhouse Applicant Scott Rogers Address: 934 Lewiston Road Map/Lot: 0008-0030 Zoning: RB-1 Use Classification: Commercial Greenhouse |
|------------------------|-----------|--|

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|------------------|---|
| Findings of Fact | All Purpose Storage Address: 41 Maine Street Map/Lot: 0002/0008 Zoning District(s) Residential C & Groundwater Protection |
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I. Call to Order

Doug McAtee called the meeting to order at 7:00 PM

Pledge of allegiance

Attendance: Steve Libby Ryan Tripp, Doug McAtee (Chair), Don Libby, Julie Tajonera, Erik Hardgreaves (Vice Chair)

Election of Chair and Vice Chair

Doug McAtee welcomed Julie as a new Planning Board member and asked for nominations for Chair:



41 Motion: Donald Libby made a motion for Doug McAtee to be the Chair.
42 Seconded: Steve Libby

43

44 Discussion: None

45 Vote: 5-1, McAtee abstained

46 McAtee called for vote for Vice Chair

47 Motion: Steve Libby nominated Erik Hargreaves

48 Seconded: Don Libby

49 Discussion: Erik Hargreaves declined nomination

50 McAtee called for any new nominations

51 Motion: Don Libby made a motion for Ryan Tripp

52 Seconded: Doug McAtee

53 Discussion: None

54 Vote: 6-0

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57 **II. Election of Planning Board Representatives**

58 a. Capital Improvement Program Committee (CIP)

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61 b. Land Management Planning Committee (LMPC)

62 *(Dependent on 6/17/23 input from Select Board re: composition of LPMC)*

63 Kathy Tombarelli – there was some confusion but there is no liaison from Planning
64 Board.

65

66 **III. Approval of Minutes**

67 a. June 20, 2023 Planning Board Minutes

68 Motion to Approve: Don Libby

69 Kathy Tombarelli explained that there was a mistake

70 Suspended motion – went to May minutes

71

72 b. May 2, 2023 Planning Board Minutes

73 Motion to approve: Don Libby

74 Seconded: Steve Libby

75 Approved 5-1, Julie Tajonera abstained (new to board)

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77 The Planning Board went back to June minutes.

78 Motion to Approve as amended: Don Libby

79 Second: Erik Hargreaves

80 Approved 5-1, Julie Tajonera abstained

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85 **IV. Site Plan Review**

86 Scott Rogers
87 Address: 934 Lewiston Road
88 Map/Lot: 0018-0020
89 Zoning: Residential B District-1 (RB-1)
90 Use: Commercial Greenhouse
91

92 There was a discussion as to the status of the agenda as being Tabled. The Planner
93 clarified that it was not Tabled – the application has never been deemed as complete.
94

95 The Planner gave an update as to the history of the application, the two dates that it had
96 appeared previously. See video content starting at 9:39
97 <https://cloud.castus.tv/vod/ngtv/video/64b726aa6e3e9c0008f28e4c?page=HOME>
98 She explained that she replicated an error from the previous two meetings that occurred
99 before she was the Planning in NG (related to the Zoning District). It is not located in
100 Residential C, but Residential B-1 (RB-1). The implication is that in RB-1 Commercial
101 Greenhouse is allowed, but if the use triggers Site Plan the lot size must 5 acres (or
102 more).
103

104 Planner Tombarelli mentioned that Scott Libby had brought the error to attention and
105 that she verified it...Planning 101 check and verify...do not rely on what has been done in
106 the past. She explained that she had pulled the property file to see what had been in the
107 past...and that the then Code Officer did do a Status of Lot letter to file, probably because
108 there were inquires as to what could be done on that lot, and that the lot was a legally
109 non-conforming lot of record (1.8 acres) and does not meet the current zoning of 2 acres.
110 She went through the previous permitted uses. And the last use that she did not see any
111 evidence of the last use going to Planning Board.
112

113 Doug McAtee opened the application up to discussion.
114

115 Julie Tajonera – none
116 Don Libby – Don gave a scenario of a request to go from a single family to a duplex on a
117 legally non-conforming lot...how would that be any different? Non-conformance over
118 time should diminish and conformance should increase...you don't just keep stringing
119 out non-conformance.
120

121 Erik Hargreaves asked if it had been over a year since the last business left.
122

123 Planner Tombarelli clarified – the application process was started before the year was
124 up.
125

126 Joseph Pugh, on behalf of the owner Scott Rogers, explained that the owner/operator
127 stayed until October 2022 even though he did not pay rent, so it had not been a year.
128

129 Ryan Tripp stated that it is a very different use, but what else are you going to put in
130 there? At this point it is non-conforming so it would have to be an artist...good luck with
131 that.



132 Scott Libby – well we knew it was going on (artist/welder) but it never got approval. As
133 to what could be allowed (if the artist had got approval) Kathy said a use less intrusive
134 that the artist/welder or similar to. Whether this would be less...that should be
135 determined.

136
137 Steve Libby said he is grappling with the Use, not looking at the metal fabrication (art)
138 shop.

139
140 Doug McAtee asked if it was up to us (PB) to make a determination of the timeline or do
141 we look for further research or a legal opinion.

142
143 Kathy Tombarelli said the last permitted use she sees, permitted by both the Code Officer
144 and the Planning Board was 2009. The last Use was not permitted, should or did the
145 Town know about it, probably yes, but she thinks a legal opinion might be warranted in
146 order for the Planning Board to know how to act.

147
148 Chair McAtee said that was his opinion

149
150 Don Libby said he would have to agree to that...the goal is not to continue in non-
151 conformance...if there is abandonment, we need a legal opinion...because this isn't just
152 about this application.

153
154 Steve Libby read from 3.2.2 Non-conforming Uses...he doesn't want to make a mistake
155 interpreting the non-conformance

156
157 Doug McAtee spoke directly to the applicant about the issues.

158
159 Joseph Pugh asked how a previous application was approved on less than 5-acres.

160
161 Scott Libby replied that that building went through as a different use and then a portion
162 rented to a grower which did not go through Planning Board.

163
164 Don Libby talked about the history...he doesn't believe a permit was issued.

165
166 Joseph Pugh asked if the business is legal.

167
168 Steve Libby said that whether or not a business is legal is code enforcement (not PB).

169
170 Erik Hargreaves asked if the question isn't so much the use but as to non-conformance
171 and continuity. The definition said occupied

172
173 Planner Tombarelli said that if that last business had been permitted, we would be
174 moving from one legally non-conforming use to another legally non-conforming use and
175 we would be able to make a determination tonight. But because those steps did not
176 happen from her point of view there is a couple legal questions, 1.) is what the Planning
177 Boards authority is, can you consider because the last business because it was there and
178 known by the town (does that count) and 2.) is there any vested interest (rights) given
179 this is not a formal application because it has not been deemed complete. Those are the
180 two questions that she has. That being said, she is making every effort to find a way to
181 make this work and legally move forward.



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Doug McAtee wants Kathy, Rick, & Town Attorney to work together to give PB the guidance they need...he's not a lawyer and he doesn't think we (PB) should be making that determination...

Don Libby made a motion to Table until Town Staff gets legal advice.
The motion carried 6-0

Don Libby spoke to the applicant and let him know it was not his application, but the issue of non-conformance and the obligation the PB has to tax payers.

V. Findings of Fact

All Purpose Storage New Gloucester, LLC
Address: 41 Maine Street
Map/Lot: 0002/0008
Zoning District(s): Residential C & Groundwater Protection

Steve Libby thanks Planner Tombarelli for circling back to this applicant.

Don Libby made a motion that the Chair sign the Findings of Fact
Doug asked if it was ok if he signed it if absent
Don Libby changed his motion that the Vice Chair sign the Findings
Second: Hargreave
Vote 5-1, McAtee abstained (was not there)

Ryan Tripp as current Vice-Chair signed

VI. Planning Board Business

- a. PB signatures: All Purpose Storage Expansion Site Plan approved 6-20-2023 Sign before leaving the building.
- b. Reminder: PB meetings back to 1st Tuesday – next meeting 8-1-2023
- c. Other
Doug McAtee said he has been working on language to work on Amendments to Site Plan. He asked if he should send it to the Planning Board.

Kathy Tombarelli said to send it to her and we can put it on the agenda for a light night. She said she found the amendment process frustrating too.

A member of the public, resident on Sabbathday Lake asked if they could make a comment.

The resident 103 Outlet Road said the Planner told her she could come.

Don Libby said they have been advised that they can't do public comment on an application if it isn't on the agenda because they would be violating due process.

The resident responded that she had been bounced around



231 Planner Tombarelli asked if they could go to Select Board for Public Comment
232 She also explained that it was for a past application that was already approved.

233
234 A discussion ensued about the appeal period. The appeal period has ended.

235
236 Kathy Tombarelli talked about what she had found in the file regarding the
237 notifications, etc.

238
239 The Board and the Planner suggested that they may need to consult with a land use
240 attorney.

241
242 Don Libby asked about the status of LD 2003.

243
244 Kathy Tombarelli talked about the extension to July 1, 2024 and the grant to help
245 pay for ordinance changes.

246

247 **VII. Adjourn**

248
249 A motion to adjourn was made by Don Libby at 7:44
250 Seconded: Steve Libby
251 Vote 6-0

252

Kristin M. Collins
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M E M O R A N D U M

TO: Kathy Tombarelli, Town Planner
Town of New Gloucester

FROM: Kristin M. Collins, Town Attorney

DATE: August 15, 2023

RE: **934 Lewiston Road**

You have asked for my opinion regarding the nonconforming status of a commercial operation at 934 Lewiston Road as a nonconforming use on that property, which is located in the Residential B-1 (RB-1) district. The owner, Scott Rogers, is seeking approval for a medical cannabis cultivation operation at that site. I agree that without any more specific regulations as to cannabis uses, the proposed use is best categorized as a “commercial greenhouse” under the Zoning Ordinance, which (along with any other use requiring site plan review) is permitted in RB-1 only if on a lot of more than five acres. See Section 4.4.7(C).

Whether the proposed use can be approved as a change of a nonconforming use depends on the history of uses made of this property. You detail in your August 1, 2023 memo that this is a nonconforming lot containing a nonconforming structure, and that the Planning Board in 2009 approved the reestablishment of a nonconforming use (auto repair garage) on the property. You explain that a welding and light manufacturing use was apparently authorized as a change of nonconforming use in 2015 and continued at the property until October of 2022, when the tenant was evicted. You also explain that the current applicant submitted an application for change of use to cannabis cultivation in October 2022 and May 2023, but the application was never deemed complete or acted upon.

As you note, Section 3.2.2 of the Zoning Ordinance addresses the conditions under which a nonconforming use may be continued or changed. The first question here is whether the last commercial use of the property (light manufacturing) was legally nonconforming. In order to meet the definition of a “nonconforming use,” the use must have been “lawfully existing.” In this case, it appears the original auto repair use met this definition and was therefore legally nonconforming. To change that use to another nonconforming use, the owner or tenant would have had to seek Planning Board approval pursuant to Section 3.2.2(D). This does not appear to have occurred with the 2015 change to light manufacturing use; instead, the file seems to indicate that the Code Enforcement Officer authorized the change of use. The question, then, is whether the last use of the property (light manufacturing) is technically nonconforming and

therefore can be changed to another nonconforming use, or whether the last nonconforming use (auto repair garage) was discontinued prior to 2015 and cannot now be resumed or changed.

Assuming the Zoning Ordinance contained the same nonconformity provisions in 2015, the CEO at that time lacked authority to authorize the change of use. Without approval by the Planning Board as required, the most recent prior use of the property cannot be considered legally nonconforming. There is a body of law known as “equitable estoppel,” which provides that a municipality cannot prosecute against an owner who took actions in reliance on the written direction of a public official. However, that doctrine is available only as a defense to an action brought by a town, and does not require a town to perpetuate an error in future permitting of land use activities. The Planning Board must apply the ordinance as written and is not in the position to apply a theory such as equitable estoppel, even if the principle did apply here.

My advice to the Planning Board is that the last known use of the property was not a legally nonconforming use, and that it therefore must deny the new application because it seeks a new use that is (1) not permitted in the district; and (2) not a change of an existing legally nonconforming use. If the owner disagrees with this determination, he may of course appeal, and a court would be in a better position to address the legal issues that may be raised.

Draft changes to Article 7 – Site Plan Review

7.8 Amendments to Approved Site Plans

Approvals of site plans are dependent upon and limited to the proposals and plans contained in the application and supporting documents submitted and affirmed to by the applicant. Any variation from the plans, proposals, and supporting documents, except minor changes that do not affect approval standards, is subject to review and approval by the Planning Board.

7.8.1 Minor Changes to Site Plans

Minor changes in approved plans necessary to address field conditions may be approved by the Code Enforcement Officer provided that any such change does not affect compliance with the standards or alter the essential nature of the proposal. Any such change must be endorsed in writing on the approved plan by the Town Planner.

7.8.2 Other Changes to Site Plans

Changes that do not meet the criteria in 7.8.1 are subject to review and approval by the Planning Board through an Amendment to Site Plan Review.

A. Scope of Review

The Planning Board's scope of review shall be limited to those portions of the site plan which are proposed to be changed.

B. Submission Requirements

1. A fully executed and signed application for an Amendment to Site Plan.
2. The application fee for an Amendment to Site Plan Review as set forth by the Board of Selectmen. **(NEED SHORTER APPLICATION)**
3. Written statement of the proposed amendment(s) identifying any conditions of approval being met and any changes to waivers granted.
4. Any supporting documents of the original application that are being revised. Revisions should be clearly identified.
5. All amended plans affected by the proposed revisions. The plans shall clearly depict proposed modifications.
6. Ten (10) copies of all affected plans measuring no smaller than 11" x 17" and no larger than 24" x 36" and ten (10) copies of all supporting documents that are being revised.

C. Determination of Completeness

Upon the submission of all necessary application materials, the application shall be placed on the next available Planning Board agenda. A determination regarding completeness shall be made by the Planning Board. If the application is determined not to be complete, the Board shall notify the applicant, in writing, of the materials needed to make the application complete.

For amendments to site plans that the Planning Board did not require a Public Hearing as part of the original Site Plan Review, the determination of completeness and Amendment to Site Plan Review can occur at the same Planning Board meeting. The Planning Board may require and schedule a Site Walk and/or a Public Hearing and require abutter notification per 7.4.1 if the Board determines the proposed changes are significant.

D. Review Process

1. The Board may prescribe and use a checklist to reflect the submission requirements in section 7.8.2.B. (NEED NEW CHECKLIST)
2. The Board may make a physical inspection of the site for the purposes of determining whether additional submissions are required.
3. All applicable review procedures found in 7.4.1 may be applied by the Planning Board.
4. Action by the Planning Board in reviewing applications for amendments to site plan shall be based on written findings of fact and conclusions. These findings certify or waive compliance to applicable performance standards listed in Article 4 and Article 5 and approval criteria in article 7.5 *limited to the scope of the proposed changes.*