

Memorandum

To: DRB
From: Peter Erb.
Date: July 12, 2012
Re: July 17 Hannaford Hearing

Once again there has been an inundation of input from opposing experts and others coming in at the end of this review process. It is a lot to go through however it is very focused and I think quite useful for your upcoming deliberations. Please take the time to read it.

I don't want to add to your homework, and will try and keep my comments to a minimum.

Attorney Dumont makes a compelling argument that retaining walls are structures, and meet Hinesburg's definition of a structure, and they may well be. They, however, have historically never been interpreted as such by Hinesburg zoning administrators. Our town has a long history of property being created via the use of retaining walls, evidenced from the rear of the properties on the southern side of 116 above the Greenstreet development to the Russell house in the village, to the new Thistle Hill development.

I cannot argue that walls within setbacks are not intrusions on neighbors, or that they may be structures, however I don't want to create a new level of regulation for our town that I don't think was intended to exist. As the zoning administrator I am not willing to deem them structures, and would not require permits for them as such. This decision, as any that I make, may be challenged, and until clarified by some "higher" interpretation of our zoning language I will continue to not deem them structures.

Attorney Dumont questions the validity of any decision that has to include issues which are not yet decided, such as the inclusion of the Giroux property for the farmers market, and possibly, the future use of Lantmans. I share the same concern since it seems odd to me that an approval might be granted for a site plan that includes property not in control of the applicant. That being said, the DRB has previously accepted the fact that some issues which may impact a decision remain unresolved, and has issued decisions with conditions that they must be resolved, for example, before a building permit is issued, or CO was granted. In this case however, the subdivision and site plan approvals that will be necessary for the Giroux transaction are complicated. The fewer unresolved issues that are included in this manner in any approval, the better, especially for an application as complicated as this one since the composition of the Board continually morphs and revisiting portions could prove to be a nightmare.

The applicant stated that there was almost a third of an acre available for "families with seating or tables for eating". In fact their recent iteration of the site plan, done to accommodate the necessary stormwater swale on their property near Darkstar which forced them to relocate some of the truck turnaround area onto the green farmers market area, reduced the available green area by approximately 8%, and there are approximately .22 acres of flat usable green area, 32% less than a third of an acre, remaining.

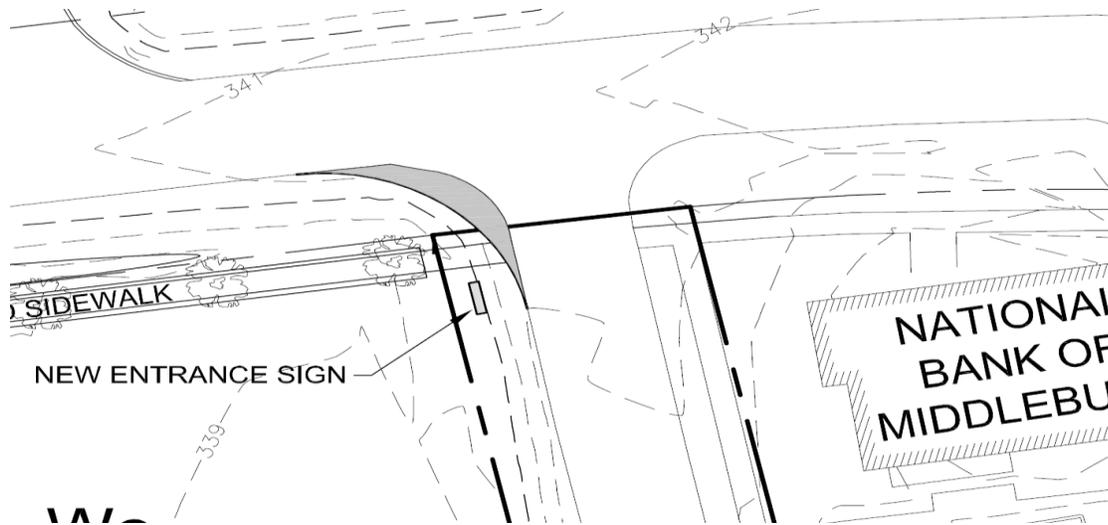
Traffic remains a large, unresolved issue. It is obvious that 116 has a finite capability to absorb traffic, no matter what controls are installed. As well it is obvious that there will be a significant increase in traffic resulting from other development, and as well, pass through, in the future, all funneled down 116. It is also clear, to me at least, that Commerce Park was not intended for regional development when it was permitted. Arguments are being made pro and con about the size of the store and its intended catchment area, and it appears to me, to be much more than local or existing pass through.

Your struggle will be to insure that if this large store is approved, there are solutions possible that will accommodate other future growth without making the traffic situation unbearable. If that can be done then the next challenge will be to insure that the applicant will clearly be responsible for traffic issues that either result from a failure of their proposed solutions, or customer traffic to the store beyond what was predicted for the future.

No plans were submitted from the applicant indicating that changes would have to be made to the existing stormwater ditch. I know that Darkstar has occasionally cleaned out this ditch to keep their property drier. What isn't clear is who will be responsible for keeping the configuration of this ditch appropriate for stormwater treatment, and not just transport. The applicant states that the "characteristics of the swale have existed for some years" however that doesn't clarify whether they have the authority to make them remain that way. I am not questioning the treatment that they claim is presently available in the swale. I do think, however, that it should be established whether they, in fact, can insure that it will remain as it is, and that others don't have rights to reconfigure the swale for maximum drainage and minimal ponding.

Signs Hannaford has requested that their signs be reviewed before the hearings are closed. I recommend that you put this at the end of the agenda and try to fit it in. Since it is technically a separate approval, to be included in this omnibus hearing process it could be heard separately if necessary after the rest of the review has been closed, thus allowing you sufficient time to cover everything else on Tues Pm and close.

- 1) Roadside Sign. *You have to decide whether you will allow this sign per the zoning requirements below. You have sufficient information to make a decision about the design and location.*
 - a) 5.4.5 (10) No signs within or over a right-of-way. No sign is permitted within a right-of-way or over a right-of-way, unless specifically authorized by the Development Review Board. This portion of commerce Street Extension is the ROW to the Bank
 - b) 5.4.5(11) Setbacks from streets. No sign, other than a sandwich board or portable sign, may be closer than 15 feet to the traveled portion of a street. Under extraordinary circumstances, the Development Review Board may permit a sign to be closer than 15 feet. The proposed location is approximately 10 feet from the traveled portion.



I have not even glanced at the applicants proposed approval decision, as it seems premature be reviewing it before you have completed the application hearing process

I have tried to arrange the packets with the most pertinent information at the beginning, however it all is important so please read them through.

Thanks, Peter.