

Union Planning Board Minutes
Thursday, October 13, 2022, 6:30 p.m.
William L. Pullen Municipal Building Downstairs Meeting Room

Present: Gerald S. Brooks, Jr. (“Jerry,” Chair), Dale Flint, Jesse Thompson, Glenn Taylor

Others Present: CEO Grant Watmough, Wayne Kirkpatrick, Todd Caverly, Helen Caverly

- 1. Meeting called to order:** 6:30 p.m. by Jerry Brooks.
- 2. Retail space/Thrift Store – Todd & Helen Caverly -- Map 2 Lot 1-3:**

Jerry established no conflict or bias, quorum, jurisdiction, standing to apply, all fees & applications submitted.

Summary of application: the applicants propose to open a retail space (thrift shop) in the existing structure.

Todd said they were approved for three apartments and now have two which are on the second floor. They have reevaluated after the summer. His daughter and daughter-in-law love clothing, thrift stores, and they would like to be able to do that.

He spoke with Grant who said it would be limited to 1500’ without going through additional approval processes. He asked if 1500’ is the retail space or the retail space plus back room. Grant said just retail space. The board concurred. Todd said the retail space will be slightly less than that and thanked Grant and the board for clarification.

His big question was what would be required to be able to do this — ground floor on slab; a low threshold door goes in next week; there is a proposal in there re: parking spaces. Re: setback from boundary lines, he asked if that could be waived or is firm. The tips of two or three spots they were looking at are probably going to be close to the neighbor’s boundary line. Jerry said the parking is 10’ from the lot line; side and rear setbacks are 30, of which not less than 10’ shall be maintained as yard space. Todd said it would be set back from the road. They also need the setback from the boundary line, which Jerry said was 10’.

Grant clarified we are dealing with a retail/wholesale business, so the 10’ from boundary line does not apply to their own private vehicles.

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Todd asked about parking requirements in terms of numbers of spaces. Jerry said the only thing you have to meet is the setback from the front of the line and side and rear setbacks. The only other one would be screening to adjacent lots. In answer to Jerry, Todd said Mark Lincoln has 100' of fir trees planted right on his property, so there's a huge screen there. The lower side down the field has a little bit of brush getting fairly thick that runs along the property by the driveway that is on the Warren side of them. A lilac hedge runs from the lower driveway up about halfway to the upper drive, along much of the road, and they propose to remove one pear tree for a sign.

Referring to page 33, Retail/Wholesale Businesses, Jerry pointed out it says, "All outdoor storage of material, goods, or vehicles," so really it just implies vehicles. Todd said there would be the parking, no storage, the only storage he would foresee is if donations come through – that would be short term, like if somebody left something on the doorstep. There would a potential of something like that but no storage outside.

In answer to Grant, Todd said it would be open Tuesdays, Wednesdays, and Fridays as full days and Saturday as a partial day. He added ideally they would do a soft opening on Saturdays for a month or two then kick in full. In answer to Jerry, Helen said they do take donations. Todd added they don't give slips. They are gathering inventory already.

Jerry asked the board for questions. Glenn thinks it's a great idea.

Jerry asked Todd if he were comfortable with the setbacks. Todd said the house is about 40' from the boundary line, and there is a side yard there. The house itself is about 60' from the road. Those setbacks are fine. There would be a minimum of 10' between both the house and the parking, and the parking and the road.

Motion to approve all of it by: Glenn Taylor

2nd by: Dale Flint

4-0

Todd asked Grant if as a commercial space there were any particular requirements besides smoke detectors, fire extinguishers, gravel path to low threshold door. Grant said it sounds like he's got a good grip on it, already addressing accessibility. Grant will mail the permit. Todd asked about signage. Grant said the permit will say "signs." Signs can't block visibility technically on your property.

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3. Change of Use, Multiple Commercial Uses: Used Auto Sales, Equipment Rentals, & other potential Commercial uses – Wayne Kirkpatrick – Map 25 Lot 8-2:

Jerry established a quorum, jurisdiction, standing to apply, all fees & applications submitted. Re: any conflict or bias, Jesse noted Wayne is a member of the fire department which he is charge of but can treat this fairly. Glenn said it's competition for him but it's not a problem.

Summary of application: applicant is proposing a change of use, multiple commercial uses including auto sales, equipment rentals, and sales/rentals of self-contained storage units.

Wayne said looking at the property on 17, he is looking to move his business from 2179 Heald Highway a half mile down the road – used cars, rental business, self-contained storage units (in answer to Glenn, Wayne clarified pods) that's Mad Storage LLC but now it's under Kirkpatrick Sales and Rental. He sells tractors, too, which is where the gray matter is, because it talks about agricultural sales – is it considered machinery or...?

Jerry said “agricultural heavy equipment” is defined by the Land Use Ordinance as tractors and other agricultural vehicles with a gross vehicle weight exceeding 1,000 pounds, tractor attachments and similar accessories, trailers, etc. but not lawn tractors, fencing, etc. so yes, tractors are agricultural. Wayne he will rent his tractors down there then.

Grant said as far as renting tractors, if the board approves it tonight, the answer is yes; this talks about sales. Glenn said there's nothing saying he can't rent. Grant said not that he can see. Glenn said so we don't have to vote on anything as far as renting, but we're looking at changing the land use, or extending the commercial zone, or changing the use to include sales of agricultural equipment. Grant said two separate things. Glenn said it's not anything to do with rental; rental is already allowed. Grant said yes, in that zone, with your approval. Jerry said it didn't specify. Glenn said it's already allowed without our approval. Grant said no, it's a commercial entity, it's a change of use, so one of those uses is going to be his rentals. Glenn said but not sales. Jerry said the sticky part is on page 17, 1.10.1 Allowable Land Uses, #201 (this is a tough one): “Agricultural and related heavy equipment sales and associated services.”

Glenn said sales are not allowed. Jerry and Dale asked what's an associated service. Jerry said it doesn't specify rental. Grant went through the ordinance for clarification and couldn't find any, so it's really up to the board.

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Jerry said it's murky. Dale said there's a lot of stuff going on. Grant clarified Wayne has a Purchase and Sale agreement for the property, and the 19 acres up behind as well said Wayne. Jerry noted to Grant we have no copy of that Purchase and Sale agreement, but he can list it in the standing to apply. Wayne said he does have one.

Jerry said so the question is – and in allowable land uses there is nothing specific for rentals. Dale and Glenn said they could not find anything. Glenn said sales is definitely no. Jerry said this puts Wayne in a precarious position, no sales. Glenn said we knew that a month ago, that there were no sales allowed; that's why we're talking about changing the commercial district. Jerry agreed, but... Glenn said there's no way around that, there's no sales allowed in a rural district.

Jerry asked the name of the business: Kirkpatrick Sales and Rental. This is a tough one, because he's going to show up with a sales and rental sign, and he's just not going to sell, he's going to rent.

Wayne said he's sure the name of your business can be anything, but if limited to renting he just can't sell anything to you. He added as of three hours ago, he still has the purchase and sale agreement so if he purchases the building – he just made an offer on the property he's at now, 35 acres there. He talked to his wife. They can continue forward, purchase, the property, he's just going to rent it out to the guy that's there now because he wants to rent it 'til next April. Then by that time he's in hopes we can maybe change the ordinance and use that map and lot, at least that portion of it, to change it to commercial use which may open up some things. If he makes a purchase and sale agreement on 2179 on Heald Highway, they will be staying there, and that's going to be basically an investment property for him that he'll just rent out. They might put the pod storage units down there, so again not sure if this needs to go to a vote for rental and stuff, that's kind of maybe what he's looking at. He gets it: he can't sell there but he can rent. He noted the mercantile is being dissolved, as they have enough on their plate with sales, rental, and storage.

Jerry said he's bringing all this up in a public forum so we're all comfortable with the result, sales vs. rentals, so on and so forth. He asked for comments from the board.

Jesse had no problem as is. Glenn was really not sure what they are being asked to do. Jerry said we have to clarify straight up there can be no sales. Glenn said there's no sales; it's in the ordinance. Jerry said it has to be from him (Wayne) not from the ordinance; it has to be from the applicant.

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Wayne said if he doesn't do any sales, but he can bring his rental yard there and his storage units, he guesses that's what he's looking for. Jerry said it's all allowed. Glenn added with Planning Board approval.

Jerry said the big question, Dale touched on as well, is about associated services. Dale said if you're going to rent a tractor that's associated services, he thinks. Glenn asked what Grant thought. Grant replied it could be interpreted that way. Glenn asked if the board should get any clarification. Grant said we don't have anything in the ordinance that gives us guidance. Jerry said that's the issue. Jerry said the governing authority is us, so that's why he says we all have to be comfortable with the decision.

Glenn said we could get an opinion from our attorney, whether that's an associated service or not. Grant said we could do that if you want. The other place to look at is automobile sales, #206, that says, "and associated services, excluding body and major mechanical repair." Glenn said it says nothing about rental of equipment. Grant said but it's not saying that it's body work or mechanical repair, because those are listed separately. Those are specifically excluded, Jerry said. Grant said that might be like inspections, oil changes, stuff like that. Glenn said it does say agricultural and related heavy equipment sales, and associated services, no. Grant said in that line he would not have applied associated services to rentals. Glenn said not of equipment. Grant said so consequently, in the other one, he personally wouldn't either; he doesn't get to make this decision.

Wayne said the current owner, what he's doing now with cranes and heavy equipment and all that stuff, working on it, I mean – Jerry said he's not selling it. Glenn said manufacturing. Glenn asked if that even came before the planning board. Grant said it did not. Ryan Lanphere did heavy equipment operations there. Jerry said there was no change of use. Grant echoed in his opinion it was not a change of use.

Jerry said rentals, coming under retail business, we're looking at #206 and #244 regardless. They both apply, automobile and retail business. Glenn said it doesn't say anything about rental. Jerry said no but he thinks rental perhaps (indistinguishable). Glenn said no, I don't, not rental of equipment. Dale didn't think it would fall under automobile either. Glenn said he doesn't think this falls under automobiles sales and associated services. Dale said let's say he wants to rent automobiles; where would that fall? Dale repeated if Wayne wants to rent his automobiles, where does that fall in the ordinance? Grant said it doesn't. Dale said it's another conundrum.

Wayne said they don't have to make a decision tonight. Glenn said he doesn't think they're going to. Jerry thought the best idea would be to put it to the town attorney.

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Wayne said that's fine; it's probably about 50/50 right now it's going to be a moot point, but he started application and paid the money so here he is.

Dale said the other thing we discussed was moving the commercial line. Wayne said that needs to be done by the town. Dale said we could initiate that. Wayne said that needs to be done regardless. Dale said that would erase 90% of all the questions.

Jerry said although, this brings up a good point: there's a big significant area in rental we don't have covered. Grant said that zone doesn't have to be changed except of selling tractors, so if he doesn't end up wanting to put his tractors there for sale, we don't have to change that zone. Everything else he's talking about doing is allowed in the rural zone.

Wayne asked the rentals and stuff? Glenn thinks the rentals are still a gray area. Grant said the rentals and sales are the question. If he ends up not doing them there, we won't have to change the zone.

Glenn said maybe we need to address the rental issue in the ordinance at the same time. Wayne said because if it was commercial use, this wouldn't even be an issue, correct? Glenn and Jerry thought correct. Glenn said because it would be agricultural sales and related uses. Jerry said it would still come before the planning board, but it would be initiated.

Wayne asked if the board tables this, gets back to attorney, does he have to pay another \$100. The answer was no. Glenn said we'll pay \$100 to go to the attorney.

Dale confirmed we've got no problem auto sales. Rental yard: Glenn said it's a gray area, that's what we need to ask the attorney.

Jerry said the problem is this: the pods are rented, not commercial storage. These are pods, they're not self-compartmentalized storage units. Grant said they're not agricultural related heavy equipment, so associated services don't apply to the pods. Glenn confirmed Wayne has them now over there.

Dale said wouldn't that come under storage? Glenn would think so. Jerry said self-compartmentalized storage units, that's a whole 'nother ballgame. Those are fixed. Dale said we did approve a storage for that area. Glenn said if they've got wheels on them, they're portable, there's no permit required. He added if he builds a chicken coop on wheels, then he doesn't need a permit. Jerry said we're still talking sales and rentals regardless.

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Grant said any structure that's going to be on the property seven months or longer is called a permanent structure. If you have something registered, now it's registered so it can't be considered a structure. So if you put wheels on your chicken coop and then registered it, it's not a structure; but if you put wheels on your chicken coop and don't register it, it's a structure. Glenn said what if I just move it around every couple of months? Grant said then you're trying to circumvent the program; we will get you eventually, because one time you'll forget to move it.

Dale said we've got rental equipment. We've got rental storage units. Glenn said are rental units in the rural district, yes. Jerry said as a retail business. There's no specific thing addressing that, as we do funeral homes. We don't have funeral homes.

Jesse said since he's new to this he's a little gray. He confirmed the issue is it's tractor sales, specifically tractors not automobiles. Jerry said if it was automobile rental, that would be an issue as well, just because nothing addresses it specifically. Jesse confirmed the automobile sales is ok being in the rural district, but it's the tractor sales and rental. Jerry said tractor sales is a definite no. Tractor rental is a question – we don't have anything that specifically addresses it. It could be potentially under associated services, under agricultural sales.

Grant said if you associated services for agricultural, as a rental, then we look down at automobile sales and associated services: we'd have to use the same logic so he could rent cars. In answer to Dale, Grant said he was referring to agricultural related heavy equipment and associated services. If we are saying associated services is renting tractors, then on automobile sales and associated services we can use the same logic and say associated services there would be cars, and yes he could rent them. Glenn said he's not asking to rent cars. Jerry said he has the ability to. Grant said we've got to apply it evenly across the board.

Glenn said back to storage facilities...

Jerry said now that the board has brought it all up, personally he's comfortable as it stands. We had to be brought up.

Glenn said compartmentalized storage facilities, planning board except for village district. Jerry said those pods are not compartmentalized. They're talking about a full structure that's permanent. Glenn said it doesn't address the pods. Jerry said we do under retail business.

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Dale was looking at compartmentalized storage facilities: what if they're mobile? In other words, if he rented a little compartment, took it to the person's home and they filled it up with whatever they wanted to put in it, you could pick it up again and bring it back to your facility, and now would that come under the compartmental storage facility?

Jerry said no, again that's a permanent structure. Dale said it doesn't say anything about permanent structure. Jerry said there is no specific... Dale said if he left one of those compartments there for seven months, would that be considered a structure? Grant said not if it's inside a building. He added there's a difference in his opinion between a compartmentalized storage facility and what he's going to do is customers don't come there to access. They'll call him and say we need our unit delivered so-and-so. The customers don't come there except to deal with the beginning end of doing so.

Glenn brought up checking with Washington to see how they handle PB&J. Wayne said they go to people's houses. Jerry said you don't bring them back full of their gear. Dale said they can be. (Crosstalk.) Wayne said he can bring them back, put them in his storage building, stack them up two high so they're just like cord wood. Jerry said he didn't think that was the intent of the compartmentalized storage.

Wayne and Glenn said off topic.

Back to equipment, Jerry said there will be no sales. There will be rental. And are we going to hold to the associated services? Glenn said there may not be any of it; we're not voting on anything anyway. Wayne said they could get back to him. Glenn said nothing as far as sales is going to happen until the next town meeting.

Jerry asked if it would require us to come back to a meeting if attorney said no, rental does not apply to associated services? We'd still have to bring it before a vote. Or do we have to come back?

Grant all of it's up to you guys. If you voted tonight saying if we get a positive response from our town attorney that this is ok to do, we approve it. Let's say you did that. You don't have to do that. Let's say you say we've got to find out what the attorney says, we've got to table it, we've got to come back.

Jerry recommended a motion that if rental's ok...

Motion if town attorney says rental is ok then we approve this as written for rental not sales by: Glenn Taylor

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Glenn said this referred to agricultural equipment. Grant said what about pods? Jerry said pods are fine. And car sales? Jerry said if he wanted rental, that's fine, too as per the attorney.

Dale said what Grant is saying is combine it all.

Grant said now you've just decided on one item, not voted on yet.

Jerry said we have to apply the associated services to both areas: to agricultural tractors, and the car in the event he ever wanted to rental. So there's two things.

Grant said if the attorney comes back and says associated services is tractor rentals, so are you ok to rent cars? Jerry said yes. Grant said if he comes back and says no, that's not what it means; it's already ok to rent cars.

Jerry said a negative response in any category comes back to the board.

Dale confirmed with Glenn his motion was not specific on the rental, that was all three.

Motion (as above) if town attorney says rental is ok then we approve this as written for rental not sales by: Glenn Taylor

2nd by: Dale Flint

4-0

Grant said that only approves the tractor thing. We need auto sales and his pods.

Motion to approve his auto sales and associated services by: Dale Flint

2nd by: Glenn Taylor

4-0

Grant brought up pods. Dale would like to see what attorney says about the term "rental," because pods are rental pods. Glenn said they're not equipment rental, they're something totally different. Jerry said the question is would they be considered compartmentalized vs. retail business. Glenn said everything he's looking at that says storage – boat storage, rural district – planning board; everything that says storage says planning board. Jerry said we could in fact apply the compartmentalized and still approve it, no problems. Glenn thinks they're storage. Jerry said compartmentalized. Glenn said that's in storage.

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Grant said what about it being a service he's providing, with the pods. Glenn said they're storage. Jerry said commercial storage facility – Glenn said planning board – Jerry said no, rural district is a no on commercial, that's storage facility. Compartmentalized storage facility – commercial, industrial, rural – planning board approval. We can do that. Glenn asked what's the difference between commercial storage facility and compartmentalized storage facility? Jerry said commercial is a huge warehouse that's perhaps storing maybe cars. Glenn said this is compartmentalized. Jerry says so this applies #306, and away we go.

Motion (to approve pod storage, under compartmentalized storage facilities) by: Glenn Taylor
2nd by: Dale Flint
4-0

4. Amendment to Commercial District:

Jerry said basically what we're looking for is a vote tonight for the selectmen. Grant showed the board what a proposed article might look like. Dale wanted to talk about it a little bit: you're ending it at the lot we talked about, right? Grant said currently it ends at the bank. It would include the lot we just approved Vick Pease for his storage building, those two lots. Dale asked if we should we move it further. Grant said the next lot over is residential. Jerry said it would change their lot, whoever's existing there, to commercial. Grant said this is changing two lots currently commercially used to a commercial zone.

Dale said where Brooder House used to be is commercial. Grant said that's way up the road. If you take a whole bunch of residential houses and put them into commercial, you don't want to do that. Glenn said taxes. Grant said any residential that we put into commercial, we have to do an official notification of the proposed zone change. They're not going to want to do it.

Jerry asked what the negative impact would be. Grant said potential change in taxes: use of the property has now expanded to include commercial, so it's going to affect the value of the property over time at least. He added the board can table this until the next meeting, because he just talked about not needing this to be done. Consensus was to do it anyway.

Dale said the other thing is you can still have residential in commercial areas. Grant said you can, but most comprehensive plans try to have you not zone anything that is currently being used as residential in commercial. Dale said that could negatively affect those people that have residences there.

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Grant said he notified the property owners of these two lots that this was being looked at, Wayne and Vick Pease. Neither one objected to it. It's entirely up to the board.

Jerry's opinion would be to continue forward, the idea being if that's commercial district it will be enticing to a commercial entity out there, still maintaining the rural nature of the town; keep the big commercial buildings on Rt. 17 and maintain open spaces and such that make Union rural. Grant said we have commercial entities in rural zone in a bunch of places in town. Union True Value is a rural zone. Jerry wondered if that would happen again in the future, probably not. Grant said it could but probably not, noting Mic Mac Market is also in the rural zone.

Dale thought they should vote to go to the select board.

Motion to propose to the select board to change commercial zone on the north side of Heald Highway to include Map 25 Lot 8-1 and 8-2 by: Dale Flint

2nd by: Glenn Taylor

4-0

5. Accept minutes of July 14, 2022:

Motion to accept by: Dale Flint

2nd by: Glen Taylor

3-0-1 abstention (Thompson)

Accept minutes of September 8, 2022:

Motion to table by: Glenn Taylor

2nd by: Dale Flint

3-0-1 abstention (Thompson)

6. Any other business by the board: None.

7. Adjourn:

Motion by: Dale Flint

2nd by: Glenn Taylor

4-0

Meeting adjourned at 7:31 p.m.

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Respectfully submitted,

Sherry Abaldo
Secretary