



**Stratham Planning Board  
Meeting Minutes  
October 4, 2017**

**Municipal Center, Selectmen's Meeting Room**  
10 Bunker Hill Avenue  
Time: 7:00 PM

Members Present: Bob Baskerville, Chairman  
Jameson Paine, Vice Chairman  
Mike Houghton, Selectmen's Representative  
David Canada, Member  
Robert Roseen, Alternate

Members Absent: Tom House, Secretary  
Nancy Ober, Alternate

Staff Present: Tavis Austin, Town Planner

**1. Call to Order/Roll Call**

The Chairman took roll call.

**2. Review/Approval of Meeting Minutes**

**a. September 20, 2017**

Mr. Baskerville requested a change to Page 2, sentence #2, correct Mr. Ring's word from "extremely" to "super". Mr. Paine made a motion to approve the meeting minutes with the change incorporated by Mr. Baskerville. Motion seconded by Mr. Houghton. Motion carried unanimously.

**3. Public Hearing**

**a. 45 Portsmouth Ave. AutoFair-Nissan; Andy Crews, AutoFair Realty II, LLC.**

Preliminary Consultation to revise existing site to show overflow parking on the gravel on the western part of the site and to show a revised aisle width north of the existing building.

Mr. Austin explained the project is before the board, in the response to a code enforcement action. The code officer questions the number of vehicles located on the north side of the building and the cars that are parked in the future Gateway road right of way to the rear of the building. The original site plan, which is in the packet, establishes a

30 ft. travel aisle around the perimeter of the building between two driveways, starting east of the building parallel to Portsmouth Avenue and traveling westerly for the rear of the building, then returning back to the shared driveway between the two AutoFair properties. The approved site plan contains a note that states "aisle widths are 20-24 ft." Mr. Austin stated there is a 30 ft. aisle stipulated on the plan, the notes on the plan state aisle widths of 24 ft. two-way and 20 ft. one-way travel, etc. Mr. Austin's understanding of the request is consideration of a site plan amendment to increase the area of parking on the north side of the building and reduce the aisle, consistent with the approved waivers, and to clarify, in writing, the note on the westerly side "gravel to be used as overflow parking". The concern from Town of Stratham staff is the note proposed for the overflow parking in the road does not say "until such time as a Gateway road is established", similar to what occurred behind Subaru. Mr. Austin stated if these proposed changes are something the planning board doesn't take issue with, it is suggested the planning board specify whether a new mylar needs to be recorded or if a subsequent verbal documents specifying the changes be added to the previously recorded plan on file.

Bruce Scamman, Emanuel Engineering, representing AutoFair Realty II, LLC introduced himself, Andy Crews, AutoFair; Nick Hawkin, AutoFair; Nick Lazos, attorney of record, and Tim McGlaughlin. The preliminary plan has been postponed the past two months due to Mr. Crews and the Planning Board's schedule not aligning. Mr. Scamman explained the proposal is to narrow the aisle which has waivers supported by the board; and to have some overflow parking in the gravel area in the rear of the site. The design includes the Town of Stratham's largest fire truck to make sure they can access the site. Mr. Scamman handed out color copies of the plans to include in the board's binders. Mr. Scamman explained these changes will help to alleviate crowding issues on the site, there's an additional approximate 10 ft. of area that will be able to have cars parked. When the plan was originally approved, it included areas for parking as delineated on the plan and it has been moved along the aisle way. The only area that is 20 ft. is the area over the 6 parking spaces. The remaining aisles are 25 ft. The area which has the narrowed 20 ft. aisle way is approximately 60 ft.

Mr. Baskerville asked if the aisle becomes 10 ft. narrower, the note states "11 ft. and more storage", where does the extra foot go. Mr. Scamman stated when the as-built plan was created it was built 1 ft. wider. Mr. Baskerville questioned the width of the gravel drive at the back of the property. Mr. Scamman stated that it is varied. When it was originally built it was 30-40 ft. wide, one end is significantly wider from hauling material, additional gravel was put there, and there is a small slope on the sides. Mr. Scamman suggested to Mr. Crew's that the drive be re-leveled so the edge is not as sharp. Once that is done, it will be back to the 30 ft. +/- that is was originally. Mr. Baskerville asked for clarification that the drive is strictly for storage and no customers would be in that area. Mr. Scamman stated yes. Mr. Canada asked for the full dimension. Mr. Scamman explained the lot is roughly 360 ft. wide so it would be roughly 30 ft. x 360 ft. Mr. Paine questioned if there will be a change in the number of parking spaces, or allowed vehicles. Mr. Crews stated it would be the same number +/-; there is a storage of 300 +/- already in place. Mr. Crews confirmed this is just an "ease of movement", not additional storage. Mr. Crews explained Mr. Morong's concern was the top side of the site, which is when the inventory arrives in bulk at certain times of the year, Mr. Crews does not see this being a continual

long-term, yearly problem. Mr. Crews explained the road in the back will take care of the excess storage on the lot, without having to go across the street for storage. Mr. Crews stated the comment regarding the easement is not on the plan because there is an existing agreement with the town that the taking is in place. There is a memo of understanding within the town that is filed, and on record, so it is already states that if the Gateway District comes into place the town will gain access to the road. Mr. Austin asked for clarification from Mr. Crews regarding the reference of 4902. 2295 the memorandum of understanding stated on the note. Mr. Scamman replied that is not, that note references the access easement for the farm to go back and forth. Mr. Scamman and Mr. Crews agreed that a note of reference regarding the memorandum of understanding could easily be added. Mr. Paine questioned whether there will be any changes in drainage, etc. for these proposed changes. Mr. Scamman stated no, that everything is existing and how it was designed. Mr. Scamman stated the Gateway District came in after this site plan approval and allows for parking along the roads. Mr. Scamman stated the town would like parking along the sides of the road and there could be parking on both sides of that road and have access as part of the development. Mr. Austin asked for confirmation of the approximate number of cars which would use that road. Mr. Crews stated a maximum of 60 and probably an average of 40. Mr. Austin questioned the different depths listed; the east end (Portsmouth Avenue) is where the triple-deep cars would be and roughly 15-16 extra cars; the paved area will only hold 16 more cars depending on the model. Mr. Canada questioned if this is to facilitate strictly Nissan inventory or is it anticipated to store other dealer's cars. Mr. Crews stated it is strictly for Nissan inventory.

Mr. Austin stated if this is to move forward a noticed public hearing, to make the site plan amendment, and the notice period will allow the applicant to come up with the language or mylar. Mr. Austin explained the Town of Stratham does not have an amended site plan application process, but Rockingham County Deeds does. An amended site plan can be filed, as long as it has the Planning Board signature on it. Mr. Baskerville asked the applicant to submit a site plan application, with a waived application fee, and pay the newspaper and abutter notification fees. Mr. Crews and Mr. Scamman stated the new mylar will note "the purpose of this plan is to amend the following items..." and suggested adding the memorandum of understanding currently on file and note "all other aspects of the approved site plan are still in place". Mr. Baskerville asked if there was anyone in the audience who would like to speak. No one came forward. Mr. Baskerville asked the board if they are in agreement with the proposed changes; Mr. Paine stated he is in agreement with the proposed changes as long as the number of spaces does not change.

Mr. Austin asked the board to clarify where the AutoFair II site stands in the process, where the timelines are, etc. are for the code enforcement officer. The town's position is to make sure that all permits remain valid and everything moves forward with construction as approved by the town. Mr. Austin stated there are some site plan regulation issues that need to be clarified, some court cases that are muddled even further unless you are victorious in those cases, and there is a set of statutes that need to be cleared up. Attorney Lazos submitted a letter, on behalf of Mr. Crews, requesting a response and feedback. Mr. Deschaine, Town Administrator, and Mr. Morong, Code Enforcement Officer, are away this week and unable to attend tonight's meeting. At the end of last week the town's attorney was given a cover letter, background, notice of

139 decisions, and correspondence from the applicant and code enforcement officer, in order  
140 to have the planning board make a decision so, upon their return, a response can be made  
141 to Attorney Lazos. In the interim, Mr. Scamman sent an email stating AutoFair II will be  
142 attending the meeting tonight. Mr. Austin suggested the applicant ask the Planning Board  
143 for clarification in order to move forward. Mr. Austin explained there is a question of  
144 interpretation on the planning board permit. Mr. Austin suggested, at the advice of the  
145 town attorney, he speak with applicant and receive confirmation from the planning board  
146 to respond to Attorney Lazos on behalf of his client, in a timely fashion. Mr. Baskerville  
147 asked for clarification of the Code Enforcement's correspondence questioning the vesting  
148 of the site plan. Mr. Austin explained "vested" has two statutory meanings and there is  
149 "active and substantial conformance". The site plan regulations state "with an approved  
150 site plan you are to have a building permit within one year". This particular project, the  
151 planning board granted 2-years to obtain a building permit from the date the site plan was  
152 recorded. Mr. Baskerville asked when the planning board approved the site plan. Mr.  
153 Austin stated 9/3/2014 and it was recorded 12/15/2014. Mr. Baskerville questioned  
154 whether a building permit was pulled in December 2016. Mr. Austin confirmed yes. Mr.  
155 Austin stated, the non-attorney read of the statute:

- 156
- 157 I. Vesting a project with regard to protecting 5 years of changes of the zoning
- 158 regulations.
- 159 II. You are protected forever more.
- 160

161 It is Mr. Austin's understanding that AutoFair I-Nissan believes they have achieved the  
162 "forever more" status, barring any proposed change, etc. Mr. Austin has had discussions  
163 with the town attorney, who suggested the question be posed to the applicant. Mr.  
164 Baskerville, Mr. Canada, and Mr. Houghton would like more information on the situation.

165

166 Mr. Crews stated the reason they attended tonight is due to an email from Mr. Morong  
167 which stated he better show up, and then Mr. Morong is not in attendance. Mr. Crews  
168 stated he received an email that he took as threatening because it stated if you don't do  
169 "x" by "y" the \$1.5 million that was put into site improvement will be gone, which is a  
170 problem. Mr. Crews explained the intention is to build a dealership, and there are  
171 circumstances that happen in business that cause delays. When the two year permit came  
172 up, the permit was pulled and asked the town for advice on what needed to be done, which  
173 the town stated in an email. Mr. Crews understood that once those items were completed  
174 the plan would be vested. After such items were done, including a foundation and  
175 building permit, he received an email that states "until you put full foundation and footers  
176 in, it is not vested, and said work must be done in 60-90 days. Mr. Crews stated if he had  
177 known it was going to be \$2 million to fully vest, which he didn't have the opportunity to  
178 make that decision to keep the permits in place and spent \$1.5 million to that point, he  
179 might have done something differently. Mr. Crews stated there are two items he is  
180 concerned with; 1) the interpretation that Mr. Morong has provided, which they disagree  
181 with, and 2) what is the next step and the appeals process. Mr. Crews would like the town  
182 to give guidance and a decision of "yes you are vested" or "no you are not vested".  
183 Attorney Lazos stated a letter was sent on September 15, 2017 responding to an email  
184 from Mr. Morong and since there has been no response he felt the need to come before the  
185 board to raise this issue. Attorney Lazos put together all of the correspondence, emails,

etc. that has been going back and forth since September 2016. Attorney Lazos gave the planning board a copy of the paperwork. Attorney Lazos gave a short summary of what has occurred since summer 2016. In the summer of 2016 Mr. Crews indicated that his ability to get a franchise on site was delayed. At that point Mr. Morong and Mr. Austin were contacted and explained the 2016 deadline was nearing and the applicant would like to get advice instead of extensions for what work needed to be done on the site so the site plan would be vested, since it was a substantial amount of work. A letter was received from Mr. Morong and Mr. Austin which gave three options, one option was to complete the work which was offered and you get a permit by this date Mr. Crews understood they would be in compliance. A full building permit was pulled in April 2017 and in negotiations with a franchisor. Mr. Morong sent Mr. Crews an email for an update on the status of the construction of the permit. Mr. Crews responded that things have been busy and he was uncertain as to whether the construction would be completed in the near future. In the first week of September 2017 an email was received from Mr. Morong which advised, if the foundations and footings don't get put in by December 15, 2017, as agreed, the site plan would be void. Mr. Houghton asked if Mr. Crews agreed to foundations and footings. Attorney Lazos stated the applicant never agreed and they did not know why December 15, 2017 is a date of concern. Mr. Crews understood that getting an approved building permit was an acknowledgment that the plan was vested, which is the agreement that was made previously. Attorney Lazos responded to the email stating the town is breaching the agreement since the work and permits were in place. Attorney Lazos stated the vesting language is in the site plan regulations so it is up to the planning board to determine if the plan is vested.

Mr. Austin explained that Mr. Morong is the Building Official and Code Enforcement Officer so when cars are seen parked somewhere other than the approved site plan, he has to enforce the site plan. Mr. Austin stated that the site plan regulation language, under active and substantial, all of the items Mr. Crews completed is there except the footings and foundation, so it is Mr. Morong's understanding that it is not complete without the footings and foundation. Mr. Baskerville asked if a building permit can be extended. Mr. Austin stated yes. Mr. Austin stated the expiration of a building permit and the expiration of a site plan review are looked at differently. The town's attorney stated with the amount of correspondence to date, the applicant is looking for an interpretation and clarification from the planning board. Mr. Houghton asked if the question is 5 years or perpetuity. Mr. Crews stated he believes from the date the building permit was pulled there is a 5 year vested timeline. Mr. Crews explained if this goes to superior court it appears the odds are in his favor to receive a lifetime vestment based on case law. Mr. Crews is not asking for a lifetime vestment, he is looking for 5 year vestment from when the permit was pulled.

Mr. Canada stated the Board of Selectmen are Mr. Morong's boss and they be the ones to make the determination. Mr. Austin explained the statute is set up for the planning board to make the interpretation. Mr. Crews stated when Roger Giroux's site was purchased it did not have a foundation in, just a parking lot, and that site was vested for 5 years. Mr. Baskerville stated that it sounds like an easy resolution, but the planning board will need Mr. Morong's explanation before a decision can be made. Mr. Crews stated he understood and asked for a quick resolution so he can decide the track he will take. Mr. Houghton asked what the next step is. Mr. Austin stated, in Mr. Morong and Mr.

Deschaine's absence, he is awaiting a copy of a memo from the town attorney which will be forwarded to Mr. Morong for review. Mr. Houghton asked if this item will be on the October 18, 2017 agenda. Mr. Austin stated he would like this resolved prior to October 18<sup>th</sup>. Attorney Lazos would like Mr. Austin ratify the situation since he is the decision maker on this issue. Attorney Lazos requested, prior to October 18, 2017, a report be given from the town's attorney with an explanation as to why this occurred. Mr. Austin stated the October 18, 2017 meeting is only the Sullivan Subdivision and no new information has been received to date.

#### 4. Planning Board Workshop

##### 1. Telecommunication Facilities

Mr. Austin explained the board has a modified copy of Section XIX, Telecommunication Facilities, adopted 3/1997, in the Town of Stratham Zoning Ordinance in their binders. As requested by the planning board, Mr. Austin reached out to Hank Menke's, third party RF engineer who was used to consult on the various iteration of Verizon. Any words that are bold, italics, or underlined have been added by Mr. Menkes as points of discussion. Mr. Austin and Mr. Menkes spoke at length and Mr. Menkes concern, with any attempts to regulate telecommunication facilities, is the FCC hasn't yet figured the regulations on 5G. Every cell carrier is purporting to have 5G technology, but what they don't have are the federal guidelines for 5G. 5G is the new horizon for telecommunication facilities in the IOT. Once the FCC defines what 5G is, there will be a better understanding of how it works.

##### 19.2 Purpose and Goals

In most urban area, predominantly in California at this point, telecommunication carriers are targeting utility rights of way and laying claim to every utility and light pole, and putting an antenna on them. Mr. Menkes point out that Stratham does not specify what a flush-mounted monopole is and suggested language to specify what an "alternative tower structure" is.

##### 19.2.4 Permit

The permit you get under telecommunications should include the use of existing utility poles and sighting the poles as structures so to include how, how far apart, where, how visible or not visible, etc. Mr. Menkes stated there is no regulation in the town of Stratham about small or stealth sites, which needs clarification.

Mr. Menkes will forward some sample language. Mr. Austin stated Rye, NY is going through an issue where utility companies are picking up right of ways as riders and as stealth sites because it's an existing pole, and it doesn't require a permit. Mr. Austin explained that with all the conservation land Stratham has, with easements running through and no language to control it, stealth sites could pop up on all the conservation

land. Mr. Austin will email the board micro-sites to consider. Mr. Houghton suggested that since Telecommunication Facilities hasn't been updated since 1997, it should be brought up to what is current and could it be covered until simpler language that states "anything not described here..." requires an alternative consideration to the planning board's discretion. Mr. Baskerville would like to discuss the items tonight since it needs to go to the March vote. Mr. Houghton stated telecommunications facilities are a contentious subject for residents, and people in general. Mr. Houghton mentioned Bedford, NH is going through a struggle with Verizon wanting to put a tower in that operates within a silo and residents of Bedford are not happy and their planning board is counseling them that the Telecommunications Act does create certain rights. Discussion ensued amongst the board regarding the issues Stratham faced with the latest cell tower. Mr. Houghton questioned if there would be value with laying out what the preferred path would be. Mr. Austin stated it was discussed before the final action on the last Verizon application. Mr. House asked whether the town could request coverage information from the carrier so the town could go through the process, at the town level, to facilitate the successful process for a tower. It was discussed that requesting that information may cause more issues than is needed. Mr. Baskerville stated, one thing that came up from a coverage standpoint on top of Bunker Hill is that coverage was enormously better. When the Bunker Hill site was turned down and it was moved, Bunker Hill blocks one side of town so the coverage only helps a shorter stretch.

Mr. Austin stated he will send out the Telecommunications from Rye, NY for comparison as the board goes through the current regulations and changes that need to be made.

## **2. Subdivision Regulations**

Mr. Austin asked the planning board if they would like him to put together language behind the items discussed at the previous meetings and then come up with the next punch list of topics. Mr. Baskerville stated the Cell Towers should be done first, and any of the topics brought up that Mr. Austin can put language to should be done. Mr. Austin asked if he should put Mr. Laverty's "red lines" for the road corrections/items in the subdivision regulations and add them to sections he deems appropriate, then have Mr. Laverty work with him to get approval. Mr. Austin suggested adding the paragraph that Mr. Baskerville suggested "any lot legally existing prior to the date of the map going into the books is available or otherwise it is not". A waiver can be applied for and raises the bar for the applicant to justify requesting a waiver. Mr. Baskerville stated he did some plans with boxes, regarding irregular shaped lots, and would like to discuss but a couple members are missing. Mr. Baskerville looked at some of the developments that have occurred over the last 5 years and applied the block with 75% of frontage; Sanctuary Drive 3 worked and 1 did not, but probably could be adjusted; Daley Subdivision all 9 lots worked using the block; Reiss Subdivision 3 worked and 2 did not. Mr. Baskerville discussed the remaining results with the board. Mr. Paine questioned how the Planning Board will handle the frontage with cul de sacs. Mr. Baskerville explained 200 ft. of frontage will still be required and the box will need to touch the front setback. Mr. Austin questioned whether the

327 planning board cares what the physical frontage around the cul de sac is, as long as 30  
328 ft. off the right of way can fit the box. Mr. Roseen asked if the box will have to be  
329 perpendicular and meet at 90 degree angle. Mr. Baskerville explained he is not a big  
330 fan of 200 ft. of frontage for a lot, but years ago it was overwhelmingly wanted by the  
331 town and adopted. Mr. Roseen stated the town had it, went away from the 200 ft. of  
332 frontage, and then came back to it. Mr. Houghton stated he likes this particular  
333 structure because there is talk about irregular shaped lots, but no definition and this  
334 will bring definition to what is an irregular shaped lot. Mr. Roseen stated the 200 ft.  
335 of frontage was adopted to maintain the rural character of the town. Mr. Canada  
336 stated the 2 acre, cookie cutter, lots are not attractive and certainly do not retain the  
337 rural feel of Stratham, but the cluster developments achieve that. Mr. Austin stated  
338 that a provision which states no re-subdivision within "X" number of years will  
339 prevent developers from coming in, having a couple lots approved, then resubmitting  
340 for another subdivision and ending up with irregular shaped lots. Mr. Austin  
341 explained that many towns have a 20 year wait between subdivisions. Mr. Roseen  
342 stated there is some very simple language the state uses for the AOT permit which  
343 would cover that issue. Mr. Baskerville stated he is more concerned with approving  
344 private roads because they are problematic over the long term and believes if it is not a  
345 public road there should be no subdivision. Mr. Austin and Mr. Baskerville explained  
346 the state statute is the road has to be public unless the board allows it to go private.  
347 Mr. Roseen stated private roads should meet town road standards.  
348

349 Mr. Austin stated Mr. Lavery reached out for information regarding Aspen Lane. A  
350 member of the Chisholm Farm homeowner's association sent an email to explore why  
351 the Aspen Lane part of the development is not a town road, to supply any information  
352 on why it was not accepted as a town road, and what would be required to make it a  
353 town accepted road. Mr. Paine asked what the standards are that private roads are  
354 held to. Mr. Austin stated town standards. Mr. Baskerville stated he spoke with Mr.  
355 Lavery and when the town inspects and considers it substandard, he is often told it's  
356 not a town road and has a hard time enforcing town standards. Mr. Roseen stated the  
357 decision for the town to not accept a road as a town road, if not built to town  
358 standards, should be obvious. Mr. Austin explained that Sewall Farm came into the  
359 town at the end of the last snow season, tired of contracting the snowplowing, and  
360 asked why the town won't take the road. Mr. Austin, Mr. Lavery, and Mr. Deschaine  
361 met with representatives from Sewall Farm and asked them to hire an engineer to  
362 submit an as-built and if there is any inconsistency between the as-built and the town  
363 standard Sewall Farm will pay to rectify and provide a new as-built and then the town  
364 will look into it. Sewall Farm decided that since there was significant work to be done  
365 they would keep it a private road.  
366

367 Mr. Roseen questioned through roads versus cul de sacs, and stated there seems to be  
368 a preference for through roads, due to town maintenance, they are cheaper, etc. Mr.  
369 Roseen stated most people like living in a cul de sac because children can ride bikes,  
370 etc. without worry of through traffic. He is torn over the motivation to design for  
371 needs of fire and safety as opposed to aesthetics or consideration of the homeowners.  
372 Mr. Canada states connectivity is a social aspect. Mr. Austin would like the board to  
373 modify 4.4.3, and the through road needs to be auto centric. Mr. Houghton stated the



vision for the town is seen through the master plan and the master plan clearly states connectivity, pedestrian access, etc. and how development will occur in Stratham. On top of that there is a life safety and tax burden issue, etc. The residents will vote on the master plan and its contents, and this topic, along with pedestrian access committee, needs to be revisited and put into the next version of the plan.

## **5. Miscellaneous**

Mr. Baskerville announced there is a GAC IT meeting, the 10 year plan, in Newmarket, NH next Thursday. Mr. Austin stated any town official, not an employee, should attend. Mr. Austin is already a member of the TAC Committee so it cannot be him. DOT elected to fund #1 and #2 on the list which cost more than the anticipated allotment. TAC was given the option of moving forward with project #2 or selecting a subset to make the list and Stratham made the top 5 projects, which would move through the process with the available allocation coming forward. That was sent back to DOT, and DOT crunched the numbers and the Stratham project is now in the top 3, which will go back to the GACIT hearings. Seabrook convinced TAC to put their project in as a fourth option. The Seabrook project is more than the anticipated allocation from the state, but Seabrook has money put aside. Once Stratham makes the 10 year plan, then grant applications can be filled out to figure out the total cost to the Town of Stratham. Mr. Austin will send the board Russ Prescott's telephone number, time of the meeting, and bullet points.

## **6. Adjournment.**

Mr. Houghton made a motion to adjourn the meeting at 9:13 pm. Motion seconded by Mr. Paine. Motion carried unanimously.