

**PLANNING BOARD**  
**27 School Street**  
**HILLSBOROUGH, NH**  
**October 2, 2024**

**TIME:** 6:00 p.m. –7:40 p.m.

**DATE APPROVED:** 10/16/24

**MEMBERS:** Chairperson Susanne White- Vice Chairperson: -Nancy Egner, Andrew Morris, Adam Charrette, Steve Livingston, Bryant Wheeler

**EX-OFFICIO:** James Bailey III

**PLANNING DIRECTOR:** Robyn Payson

**ALTERNATES:** Kim Opperman, Dana Clow

**Excused:** Jim Bailey

**Public:** Ed Sweeney, Patty Gregg, Peter Nickologianis, Lisa Moore, Frank Malinoski, Judy Malinoski, Joe and Chantal Kelley, Tim Wilkins, Paul - 116 Henniker St, Riche' Colcombe, Peter Mellen

**Pledge of Allegiance**

**Call to Order:**

Chairperson Susanne White called the meeting to order at 6:00 PM and called the roll. She appointed Dana Clow to sit in place of Jim Bailey.

**Minutes**

**9/18/24-** Nancy Egner made a motion to approve the minutes Steve Livingston seconded the motion. The motion carried unanimously.

**Informal Review**

Leigh Bosse

Leigh Bosse presented his conceptual plan for Merril Place which is a 24 unit detached condominium community. The Board indicated that they were in favor of this development.

**Public Hearings**

**Change of Use**

457 West Main Street (Map 12 Lot 113)  
All Purpose Storage Hillsborough LLC.

Tim Wilkins presented the application to convert 6 bays of the storage facility into indoor recreation. (Pickle Ball Courts, Golf Simulation).

Frank Malinoski spoke in favor of the project.

Bryant Wheeler made a motion to accept the application as complete. Andrew Morris seconded the motion. The motion carried unanimously.

Kim Opperman asked how many courts they were planning on.

Mr. Malinoski said 2 but they could go up to 5 and there could be a golf simulator. There is room behind the building for outdoor courts as well. He spoke about how this could be a regional draw to Hillsborough.

There was discussion about the set up within the building.

Susanne White opened the public hearing. There being no comments she closed the public hearing

Following further discussion Steve Livingston made a motion to approve the application for a Change of Use/Waiver of Site Plan Review submitted by All Purpose Storage LLC to convert six bays from Commercial Storage to Indoor Recreation. The property located at 457 West Main Street (Map 11F Lot 20). This Change of Use /Waiver of Site Plan Review application was prepared by All Purpose Storage Hillsborough LLC and submitted 9/13/2024. This approval is subject to the following conditions and in accordance with the Findings of Fact.

### **Condition of Approval**

1. Compliance with all local, state and federal laws, ordinances and regulations.
2. Compliance with all Building and Life Safety Codes.

### **Findings of Fact**

1. The property is located on 457 West Main Street.
2. The property is located in the Commercial District.
3. The owner of record is All Purpose Storage Hillsborough LLC.
4. The application was presented by Tim Wilkins.
5. The application changes the use of six bays of a Commercial Storage Facility to Indoor Recreation
6. Hours of operation will be 7 days a week from 6:00 am to 10:00pm
7. The proposed use is allowed in the Commercial District
8. No waiver requests were submitted as a part of this application.

Andrew Morris seconded the motion. The motion carried unanimously.

**Site Plan Amendment**

173 Henniker Street (Map 12 Lot 113)

Joseph Kelley Jr.

Robyn Payson introduced the application to add an Auto Service Center to the previously approved storage building. She said the application was complete and ready for consideration by the Board.

Steve Livingston made a motion to accept the application. Bryant Wheeler seconded the motion. The motion carried unanimously.

Steve Livingston said this was discussed at length at the previous meeting and the reason the building was approved was because the building permit had already been issued. This application is for Mr. Kelley to be able to work on his own cars.

Susanne White said that Mr. Kelley was asking for sales and service, inspection, detailing, warranty repairs and other services related to Kelley Auto Sales. That is what this hearing is about.

Dana Clow questioned the completeness of the application and discussed the need for an engineered site plan, as this property is in the flood zone. He said this is an entirely different application with an entirely different use. He said he had been studying Article VIA Floodplain Development specifically speaks to the requirements of construction of a new building or modification of an existing building. That is what we are talking about now, not a site that has been previously filled. He said he has looked over Article VIA and it appears to him that in order to address the specific requirements in this section there is information required under the ordinance that could only be garnered through the preparation of a site plan. He disagreed with saying that it's been waived and that's ok. The site plan provided by the applicant was inconsistent with the current requirements before the Board. So whether you want to call it a Change of Use or an Amendment, the fact of the matter is that there are considerations that need to be at least discussed before a final decision is made. Under Article VIA the only way for that information to be presented is through the preparation of a Site Plan. He said he disagrees that this is a complete application.

Andrew Morris said he has an approved building permit and has begun construction. He said the real focus of this meeting is to decide how we are going to allow him to use that structure. He said the site plan is a moot point because it has already been decided on.

Dana Clow said it was not a moot point and said the permit was issued probably in error, and to Mr. Kelley he said he would like to see him put in whatever type of use he wants. But there are requirements under the zoning that the Board cannot ignore. He said the Article does not specifically say you need a site plan but the only way you can present the information that is required is in the form of a site plan.

There was further discussion about the application.

Andrew Morris said how is this information going to change this project going forward. Dana Clow said he would hope that it would show compliance with these rules but we have no way to know that.. These rules are here for a purpose they are to protect the residents of Hillsborough and those are the people downstream from this facility.

Andrew Morris said that he is not the one who approved the building permit. If having all of that information documented is important but its not going to change the outcome....He said he understood how the process should have happened, what I don't understand is how getting an engineered site plan is going to change the outcome.

Dana Clow said we don't know what the outcome is going to be. We have no data. Mike Borden has nothing so not only did he potentially issue a building permit in error. At the end of the day he's not going to know any more about whether or not the site complies with these rules and regulations.

Steve Livingston said he 100% agrees with everything Dana is saying except for the fact that there was already a building permit issued in error. He said the Town is at fault here. If the building permit was not issued in error, we wouldn't be having this conversation. We did say if he wants to build something else, he needs an engineered site plan.

Andrew Morris said that the purpose of this meeting was not to decide whether or not to have the building, that's already been decided. Regardless of what we say or don't say that building is being built. We are here to decide whether or not he can utilize that building in the way that he wants.

Nancy Egner said her concern was with this application and the permit was for a storage unit. This application is for a service garage which in her mind means all kinds of materials in the floodplain which makes her concern go way up. The amendment is basically the change of use of the building and the change adds additional concerns and liabilities.

Andrew Moris said also spill containment should be addressed. He said the regulations for having a commercial auto repair facility and the regulations for having a storage facility are different so if we approve the use of this building as an auto service facility, he assumes he would have to comply with rules and regulations that go along with other auto service facilities.

There was further discussion about the building and the building permit.

There was discussion about the Town paying for a site plan. Robyn Payson said the taxpayers would not pay for a private person's site plan.

There was discussion that included members of the Board wanting to see a site plan and studies paid for by the Town. The discussion included talking to the selectmen about this.

Dana Clow said he would like to get Mike Borden's perspective on this issue.

Mr. Kelley was recognized and said he spoke to Mike Borden today and he has no problems. He has done the inspections on each part of it there is no problem. Second of all, he said this is an amendment to the previously approved site plan for the building. He said the building is going up and should be completed by the end of the month.

Dana Clow asked Mr. Kelley if the building had already been approved.

He and members of the Board said it had been.

Dana Clow said he wasn't aware of that, and he was sorry about wasting everyone's time.

Susanne White said it was a worthy discussion.

Bryant Wheeler said this was a special case that was not likely to happen again.

Susanne White took another vote to accept the application and asked the Board if they had any questions.

Kim Opperman said he has visited Mr. Kelley's site a number of times and he doesn't think he is much of a mechanic. He thinks he is doing 90% cosmetic he wanted to know if that was the case.

Mr. Kelley said he said he is not going to be pulling motors or anything like that. He needed to make sure he had everything he asked for in the application. If tomorrow morning he wants to do inspections, which he needs to be able to do, he needs to be open to the public and that's the reason he wrote that. Down the line he needs to move in that direction to do his own inspections and repairs.

Andrew Morris said he was the one who suggested to Mr. Kelley that he put everything he could conceive of in the application. He thought that would be easier for the Board and easier for him and the public.

Susanne White brought up a question from the Conservation Commission. Is there a plan for the capture and removal of toxic waste.

Mr. Kelley said yes he would secure it and would use Clean Harbors to dispose of it. He also said he had spoken to Mike Borden and said he said all he needed the elevations for was the propane tank to make sure its secured.

Susanne White brought up the comment from water/sewer about needing to re-submit his application.

Joe Kelley said he spoke to Penny, and it was basically a fee issue, and he has already submitted the permit.

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Dana Clow said Ernie Butler wanted him to pave a certain distance into the site. He asked if it was his intention to pave all the way to the building.

Mr. Kelley said he had had multiple discussions with Ernie Butler about that in the past. He said he would pave the apron and all the way up to the building where he was allowed. If the Board would allow him to pave further, he would. Currently he is allowed to pave up to the entrance but not beyond. He is not going to pave until the water/sewer infrastructure is in place.

Dana Clow said that ultimately Mr. Kelley would want to pave up and around his building.

Mr. Kelley said with the Board's permission he would like to pave around his building.

Dana Clow said right now there is a cutoff at the gate.

Mr. Kelley said yes.

Dana Clow said what you would prefer would be for the Board to allow paving the full extent of the building's foundation.

Mr. Kelley said yes.

Andrew Morris said it is in the conditions of the original approval that Mr. Kelley has to come back to pave the parking area.

Susanne White said the Conservation Commission might have something to say about paving the entire lot.

Dana Clow said we are just talking about where the building foundation is which is just inside that gate and somewhat more than was originally allowed. He said he can see why he would want that for access in and out of the building.

Susanne White opened the public hearing.

Patty Gregg asked at the beginning when it was just car and boat storage, why wasn't he asked for a site plan?

Bryant Wheeler said it was a parking lot that had been a parking lot for 25 or 30 years.

Kim Opperman said there were no utilities. The key thing for a site plan is to locate all of the key utilities are and to shoot the elevations and boundaries. For just parking cars he just drew some lines, and it's not even inside Henniker Street.

Patty Gregg said, with this new building, how does the building permit get issued like it did without considering all of this.

Steve Livingston said that it was never brought to the Board.

Susanne White said it was a mistake. Mr. Kelley should have come to the Board before he got his building permit before it was approved and he didn't.

Patty Gregg said there needs to be better communication between the departments.

Robyn Payson said this doesn't happen. It was a once in a million mistake. And Mr. Kelley and she had communication where he was told he had to come in for a site plan and it was not clear at some point, so the building permit was approved before the Planning Board saw it. She said she has great communication with Mike Borden and normally this is not something that would happen.

Riche Colcombe said she feels since Joe Kelley has come to town, he keeps getting the short end of the stick. Whether it's because we made mistakes in other areas or not it just seems Joe Kelley is on the chopping block in this town. We've got a business on the other end of town that is polluting the ground, and we are doing nothing about it. She has called and reported that he is polluting the ground with diesel and oil. I have been on the property and my shoes have been loaded with oil. We don't do anything about that. We let him do what he is going to do and he has admitted flat out that he was going to tell you what he was going to tell you and do what he wants. Joe keeps trying to do the right thing and he keeps improving the look of that end of town and the Board keeps bringing him in and giving him a hard time. She said she doesn't get what the big ax there is to grind is. She also said Dana Clow was cutting people off that were having conversations.

Susanne White closed the public hearing.

Steve Livingston made a motion to approve the Site Plan Amendment by Joseph F. Kelley Jr on the property located on Henniker Street (Map 12 Lot 113) to operate an Automotive Service Center. This is as shown on the sketch plan as part of the Site Plan Amendment application prepared by Mr. Kelley and submitted 7/12/2024. This approval is subject to the following conditions and in accordance with the Findings of Fact.

**Condition of Approval**

1. Compliance with Article VIA Floodplain Development Ordinance and all applicable building codes.
2. Compliance with all local, state and federal laws, ordinances and regulations.
3. No bulk hazardous materials will be stored on the premises.

**Findings of Fact**

1. The property is located on Henniker Street
2. The property is located in the Commercial District.
3. The owners of record are Joseph F. Kelley and Chantel J. Kelley

4. The application was presented by Joseph F. Kelley Jr.
5. The sketch plan was accepted by the Board.
6. The application is to operate an Automotive Service Center
7. The proposed use is allowed in the Commercial District
8. No waiver requests were submitted as a part of this application.
9. The property is located in the Floodplain Zone AE 100 year floodplain

Andrew Morris seconded the motion. The motion carried with Dana Clow abstaining.

Nancy Egner said that she understands Robyn saying this is a one time thing but she still thinks the Board should meet with the Board of Selectmen to discuss what happened and work on our processes.

### **Work Session**

### **Warrant Articles 2025**

Robyn Payson passed out possible warrant articles and the Gateway District Ordinance amended by Matt Monahan. Mr. Monahan will come to the next meeting October 16.

### **Other Business**

There being no other business Nancy Egner made a motion to adjourn. Bryant Wheeler seconded the motion. The motion carried unanimously.

### **Meeting Adjourned 7:40 pm**

Respectfully Submitted,  
Robyn L. Payson, Planning Director