



## Town of New Lebanon

Planning Board Special Meeting Minutes – Unapproved  
July 29, 2020

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**Present:** Michael Blatt- Chairman  
William Banker, Planning Board Member (virtual)  
Elizabeth Brutsch, Planning Board Member (virtual)  
Jim Carroll, Planning Board Member  
Greg Hanna, Planning Board Member  
Tegan Joy Cook, Planning Board Member  
Bob Smith, Planning Board Member

**Absent:** None

**Others Present:** Cissy Hernandez- CEO, Jeff Hattat- Deputy CEO, Paul McCreary- Town Engineer, Jon Tingley- Town Attorney, Stephanie Ferradino- Town Attorney (virtual), Monte Wasch- Chairman Business & Economic Development Committee, 4 members of the public

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### **I. Call to Order-**

Chairman Blatt called the special meeting of the Planning Board to order at 7:30 pm.

### **II. Special Meeting for Beverage and Smoke LLC**

Chairman Blatt explained, “This special meeting is taking place to determine if a site plan review is necessary for Beverage and Smoke LLC which would come into the Mid-Town mall. Prior to the meeting the applicant had not supplied a narrative. Ms. Shannen Pabla (the applicant) supplied Chairman Blatt with the narrative at the meeting. Chairman Blatt read the following narrative from Shannen Pabla.

*“To whom it may concern,*

*This is a narrative to gain permission from the town of New Lebanon rental space at 501 Rt 20- Unit 1. The property is owned by Shaker Mill Properties II, LLC, and managed by Lori Bashour and currently leased out to Beverage and Smoke, LLC.*

*I, Shannen Pabla, owner of Beverage and Smoke Convenient, LLC and renting the above stated property. The space is a total of 4,738 Sq. ft. (4,608 Sq. ft for customer accessibility and 616 Sq. ft for storage and employee only).*

*The store name is Beverage and Smoke will operate as a retail store that will sell Tobacco products, Vape products, Lottery, Beer & wine (maximum 12% alcohol content), pre packaged food products (canned goods, condiments), Candy, Toiletries and other products.*

*We also request permission for the change of the sign that will replace Thruway beverage sign to*

*state the following.*

*Beverage and Smoke  
Descriptions of items sold in store*

*Thank you”*

The Planning Board Clerk informed the audience that the meeting was being recorded.

Chairman Blatt asked if there were any questions. Board Member Carroll asked the applicant, “I am not sure what you know about Local Law 1 in regards to signs. I don’t know what you are planning to do with signage but you will have to make sure it agrees with the local law”.

Ms. Pabla replied, “We are just replacing the existing sign”. Member Carroll asked Deputy CEO Jeff Hattat if the current sign was conforming to the sign laws. Mr. Hattat replied, “I believe so”.

Chairman Blatt asked Town Attorney Jon Tingley to weigh in. Mr. Tingley notified all in attendance that he was present to represent CEO Hernandez. Mr. Tingley explained, “The applicant approached the zoning officer and asked what was required for the proposal and as the zoning officer does for any proposal she looks to the zoning code for what is required. The zoning code for the site plan says that for the uses listed in the use table that a site plan review is required. A building permit is also needed before the undertaking of a new land use activity, they have to go through the procedures”.

Mr. Tingley continued, “So Ms. Hernandez looked at the history of the site and had previous knowledge of what had occurred prior and made her determination based on her understanding of the record that site review would be required for this proposal . I am here to provide a background of what has transpired over the past week or so. I cannot say if Ms. Hernandez is right or wrong but when she made her determination that a site plan review was needed she received a flurry of emails from the property owner’s attorney, challenging and objecting to her determination. It was inferred that Ms. Hernandez has been chasing tenants away and going above her authority. On the basis of her decision Ms. Hernandez was aware that Thruway Beverage was in the same space or part of that same space in the past. She was also aware that the space was vacant for over a year. Last summer the rear half that Thruway Beverage had been in was rented by an auto detailing applicant. The applicant came before the board to obtain a special use permit approval and received site plan approval for that particular proposal. When Ms. Hernandez looked at those facts she determined that this was a different or new use, although there had been a beer store at this location it is now a different space. The space has been vacant. So Ms. Hernandez looked at the use table for a retail store. It does indicate that a site plan review is required and that’s how she came to her decision”.

Mr. Tingley went on, “Under the zoning code once the determination is made if the applicant is dissatisfied or disagrees with the decision they can come to planning board to seek their determination whether or not Ms. Hernandez was correct in requiring a site plan review. We view there being three options:

1. The board can agree with Cissy in its entirety and say that a site plan review is required.
2. The board can agree with the property owner's attorney that the auto detailing proposal was made and the understanding was that the entire Midtown mall was site plan reviewed. So that the Midtown mall tenants would not have to come in and get site plan approval".

Chairman Blatt , " I have never had an application from Shaker Mill Properties to review the entire mall for site plan review". Ms. Hernandez does not have the recollection that the entire mall was approved for site plan review.

3. The board can determine that this proposal is not a new land use and no site plan review would be required.

Attorney Tingley continued, "Again the applicant/property owner have not formally asked you to review the decision that site plan review is required but we felt that it was important to at least present to the board the objection of the property owner's attorney, and to give the basis of the CEO's decision and also to give the board what we view as the options the board can take to move forward".

Board member Carroll, "You are not changing the layout of the entire site? Will there be new sign-age, new walls, and new lay-out"? He continued, "In my eyes there is a fourth option,a lighter version of the site plan. It would make it easier for the applicant". Ms. Pabla stated, "We are not changing the signage, we are just changing the wording on the sign". Member Carroll said to the applicant that in his mind she should have all of this documented (sign-age, walls, lay-outs). Ms. Pabla replied, "Yes, I agree".

Ms. Bashour approached the board and handed the chairman a map. Chairman Blatt, "We have a map provided by the owner of the mall. The map is dated July 17, 2019 and stamped. This is when Route 41 auto was approved". Board member Brutsch weighs in, "There was information missing, we asked for more information". The application that was approved was for site plan approval for the auto place"

Town Attorney Stephanie Ferradino (present virtually) – "I took a look at this issue today and went back through the minutes through 2019. The first thing that struck me was the argument that the owner is making. The argument that an entire site plan review occurred wouldn't be possible on the record I was given.The application was submitted on June 4, 2019. The application submitted specifically is seeking a special permit to operate a motor vehicle repair shop to restore vehicles & then later the application states, "I'm requesting that the board grant a special permit and site plan approval for the operation of the auto place". "You couldn't have granted an approval on something that you don't have an application for. This application is very specific to the auto restoration shop and it's consistent with the minutes of the meeting. This discussion predates 2017. There were extensive discussions with the property owner at that time. We completely understood her position on having expedited site plan review, it makes a lot of sense, but we first needed to undergo review of your site as a whole to start with. Let's start that process. Let's have the site plan approved. Then we can make a condition of the full site plan that like uses will have simplified approval by procedure. That was four years ago and the

applicant never took us up on it. The application in 2019 is specific to the auto detailing shop only”.

Board member Cook, “ I have a different recollection of the 2019 meeting. Ms. Bashour wanted to get approval for the auto place and also asked since she was here and had to do a site plan review if she could get it all done in one thing. I thought the map was stamped and okayed for site plan review for the entire mall. I know we had this conversation. If it is retail use to retail use, office to office they shouldn’t have to come to us unnecessarily. This is how I remembered it. I thought that we approved two sets of plans that night. Now I’m understanding the legality as there wasn’t an application to do both. My question in an attempt to make this simple for everybody and to help businesses: Is the owner able to submit an application for site plan review for the entire site?”

Chairman Blatt, “We want to encourage businesses. Right now we are discussing site plan review for the current site. What we are proposing is that you submit an application and all documents and we will get everything done so that your entire mall has gone under site plan review.”

Ms. Bashour explained that this process has become very expensive. It has cost her more than \$10,000 so far. We had to hire an attorney and an architect. An application for what we are applying for doesn’t exist. Shannen wants to open a beer store and was given an application that said building permit. Try filling that out. There is nowhere to put anything.

Ms. Bashour continued, “My recollection from the 2019 meeting(that was not in the minutes, and that still shocks me) is that when we came to the board meeting that my attorney said we have two purposes:

1. Site plan review for the entire property; and
2. Auto detailing shop.

He asked if you would like to treat them together or separately. You said let’s do one at a time. So first we did the auto detailing shop”. Chairman Blatt relied, “Correct”. So by the time we get to the end of the process to vote for the auto detail shop (which was actually a special permit), the second vote and second discussion was for the entire site plan. The map was stamped and you (looking at Chairman Blatt) said “this is very valuable, hold on to it in case you need anything”. I have held on to it but it hasn’t seemed to work. Nobody spends \$10,000 to get approval for one tenth of a 39,000 square foot property. I shouldn’t have to keep coming back for site plan review.

Ms. Bashour explained, “We did this last year in 2019 and it started six months before that process. An e-mail from Ms. Hernandez that said, she didn’t see why I should have to go through site plan review for the same use. The applications don’t help, they don’t match the intentions of what we are looking for. I looked through the minutes from 2015-2019 on site plan review cases and none of the cases have two votes.

Ms. Bashour, “I had to spend more money this year on my attorney just like I had to last year. This building has been here since 1988. When new businesses come in, I would expect them to have a special permit but time and time again I need to go for site plan review. Why would I need site plan review on a 39,000 square foot building every time a 1,000 square foot business comes in”?

Board member Brutsch, “I went back through my records and we as a board said we would review a special permit for the auto. At that time we had discussed the site plan review on the existing building. I asked if the site was grandfathered in. We talked about some of the issues they have at that site. We asked for an inventory to keep on record. We did not make them to a site plan review because we were told that there was no need to do one for the auto shop. We explained that we needed an inventory from them for our records in the future if they wanted to make changes down the road”. Board member Carroll, “That’s what I remember also”.

CEO Hernandez, “Why did the board give me a decision document that says that they approved site plan review for Route 41 auto”? The decision document says site plan review for Alan Becker, Route 41 Auto LLC.

Ms. Bashour, “: Maybe everyone was confused.” Board member Carroll, “I remember site plan review on the auto place but we wanted to have everything on file for the inventory for the rest of the site. Ms. Bashour, “The goal was that Ms. Hernandez can approve things and not have people like Shannen go to site plan review and be told that she has to wait until December. Ms. Bashour states, “ Cissy I know you didn’t tell her December, but if we go through this process it becomes November, then December. Why would anyone want to open a business in a town where it is so hard? Why?”

CEO Hernandez explains, “The auto repair shop requires site plan review”. Ms. Bashour, “I understand that but it is not clear and I am ready to have litigation here. I’m really sorry, Cissy tries really hard to help but it is either the letter of the law or the intention of the law. You all know that this is ridiculous. You have an application process for that but you do not have an application for a business that comes into the town. Look at the application, it doesn’t even make sense. My applicant was asked for a narrative, then she was asked questions, it’s erroneous on Ms. Hernandez and erroneous on business owners. Everybody else in town that has one building, they don’t have to come here over and over again. This is absolutely ridiculous”! Board member Smith replied, “I agree”.

Town attorney Tingley, “Ms. Hernandez cannot go beyond her the scope of what the zoning laws allow her to do, Some towns give authority to waive site plan review but our town does not have that law. Ms. Hernandez does not have that authority, if she were to do that she would be violating the law. When an application comes in she looks at it as what is required by the town law. If you disagree with her you can appeal the decision. I still haven’t heard the applicant or property owner asked for that or have they filed an application for that.”

Ms. Bashour, “How are we supposed to do that?” Chairman Blatt asks Ms. Bashour to please stop yelling. Ms. Bashour, “Oh my god”! Attorney Tingley, “ With respect to the prior proposed

tenant for the beer store in that same space, Cissy viewed that it had no need for site plan review because that space was being filled with the same use. The reason why this one is different now is primarily for 2 reasons:

1. The lapse of time the building has been vacant
2. The new use in the space and the space is smaller.

Those circumstances are what led her to believe that site plan review was necessary. The board has the authority to look at the decision and say no Cissy was wrong and this is the same use as before and a site plan review is not required. My caution though is to find that site plan review was done last year for the overall site and if there is any question that that existed. For future new tenants that may be other than different uses, there would not be any review of those. I do think that there is a path forward in a number of ways. I do think the town could consider adopting a waiver of the site plan review process, but that has to be done by the town board. The planning board does not have the authority to say that this use is the same as before and although there was a vacancy we will not do that as a new use. If you do that then the planning board has the authority to decide that there is no requirement for site plan review”.

Shannen Pabla asked, “Why am I here? I thought I was here to get approval. Ms. Hernandez responded, “In my e-mail to you, did I not tell you that you had the right to come here to get the determination from the planning board”? Ms. Pabla responded, “You said if I disagree. You had said I had the right to go to the planning board. I have nothing to do with this.” Ms. Hernandez, “When I sent you the application, I emailed you about the site plan review to move forward for the meeting on August 19<sup>th</sup>. Something happened that this special meeting was called”. Ms. Pabla, “I wanted to open on August 1, you said that the meeting was going to be August 16<sup>th</sup>.” Chairman Blatt asked Ms. Pabla, “Would you like to appeal Cissy’s decision”? Ms. Pabla replied, “Technically it’s not my decision, this property is not mine”.

Ms. Bashour, “There is gross abuse of power here because I’m being put on the spot right now and told all I have to do is say the right words. Businesses don’t come here because they will be turned down, it’s because they won’t come here”. Chairman Blatt, “We are trying to make the easy for you”. Ms. Bashour, “This is a difficult process and there is a risk that they will be turned down. We lose businesses in the biggest square foot property in town. Thus is a problem. I can say yes I appeal it but what will happen next time”. Chairman Blatt, “I suggest next month you put in an application for full site plan review. We have a current map that has everything on it that we asked for back in June. There is nothing else we would ask for for that map. Put the application in and it will cost you nothing more than the application fee and a little time and your next tenant will be all set”. Ms. Bashour, “This process doesn’t attract businesses to this town. I think there is a systematic problem here. As a business owner years ago I went to Mike Benson, Meg Robertson and Colleen Teal and asked them to change the law. What the fuck! It’s frustrating, I have owned this property for 16 years, and there is a pattern. I don’t trust what you say. Making your decision to what the comprehensive plan says. I have spent over \$50,000 in drawings and have gotten nowhere”.

Member Carroll, “ I am on the Zoning Rewrite Committee, we are currently looking at rewriting the site plan review waiver process but we haven’t finished yet. In case of the mall there needs to be a site plan review or a site plan inventory. A diagram of what is there now. It is the board’s decision on what they want to see on the site plan application”.

Chairman Blatt, “We called this meeting because we want to see your tenant in there. It was determined by the CEO that that site plan review was needed. There two options:

1. Go through site plan review.
2. Appeal the decision of site plan review.

Those are your two options”.

Ms. Pabla asked, “How long would I need to wait?How much longer after site plan review”? Chairman Blatt replied, “Depending on our decision, if we decide you need site plan review you would come to the next meeting in 2 weeks, then a public hearing a month from that in September”. Member Smith stated, it could be 6 months”. Ms. Pabla, “Sorry we’re out, we can’t wait six months”. Ms. Pabla left the meeting.

Town attorney Tingley said he spoke to the property owner’s attorney. “I told him I would be at the meeting to discuss the three options. I think the board can take a clear path tonight for this tenant and can reverse Ms. Hernandez’ decision, if the property owner asks the board to do so”.

Ms. Bashour, “See the position your setting, ask Cissy she has her attorney here. Why did this have to happen”?

Member Cook, “We have to finish it, it’s not done. It would be very simple to do so. The board has been trying to say that, the attorney has been trying to say that we want to get her in this building. All that was needed was for you to say appeal. There is no downside here. Because if you don’t ask for that, they are going to ask for a site plan review. As far as the site plan review on the entire mall, get an application and come back in front of us, we will look at it and approve or figure out how to have that information prior to the meeting. Is this correct Cissy”? Cissy replies, “Yes, Jon and Mike both said that she had the option to say she didn’t need site plan review.

Ms. Bashour, “ Cissy, what you said to Shannen is that you got an incomplete application, and she leaves here upset because she thinks she has done something wrong”.

Town attorney Ferradino, “If you ask for the relief, you have a 50/50 chance that they will say that site plan is not necessary but we cannot have that discussion without you asking. This application cannot be reviewed unless you ask for it. We just want to have the discussion. I think everyone is in agreement that the board would like to have this discussion. We just need you to say yes, please appeal. Then they can have that discussion. We cannot do that without you saying you want an appeal. You have nothing to lose”.

Ms. Bashour, “Is there a written appeal I can fill out?” Cissy, “we do not have an application for an appeal, you can send in a written appeal.” Ms. Ferradino, “You can write an appeal right now which says ‘please appeal Cissy’s decision’ and sign and date it. If that makes you feel comfortable, and then we can enter it into the record”.

Ms. Bashour, “I would like it written in the minutes and see it in the minutes, that I appeal Cissy’s decision. My tenants are gone so maybe it will work for next time. My tenant has already left and taken her lease and check with her. I know part of this is my fault for creating that upset, but this has got to stop. For a building permit? I asked to be able to move forward last year and all I needed was ventilation and I said to Cissy can I have it without ventilation and she said no.”

Chairman Blatt, “The decision that Cissy made was that this case needed to be reviewed by site plan. Does everyone agree that this is a like for like business with less impact”? Attorney Tingley, “You as the board have the ability to reverse Cissy’s decision because the application is the same or similar use to what was already there”. Attorney Ferradino, “Just saying that site plan is not required. Lori can leave here and get her tenant back.”

Ms. Bashour, “What, I have gone through site plan review so many times. What are you talking about? My fear is that this will happen again. There is a lot of incompetence here.” Chairman Blatt, “We are not involved in the codes”.

Bashour, “Please appeal [Cissy’s] decision that her decision can be reversed because of same or similar use and that site plan review is not required”.

Member Cook. “ I would like to make a motion that we do not require site plan review for lot 1-101 Midtown Mall- Shaker Mill Properties for applicant Beverage & Smoke LLC because it is based on similar use and lesser [size] use. The area is smaller and there is less impact”. Member Carroll second the motion. The vote carried as follows:

Chairman Blatt-	Aye
Member Brutsch-	Aye (Virtually)
Member Cook-	Aye
Member Carroll-	Aye
Member Hanna-	Aye
Member Banker-	Aye (Virtually)
Member Smith-	Aye

Chairman Blatt, “the beer store does not need site plan review. We have determined that. That’s official. Now we are back to the entire mall. Would you be willing to fill out an application with the application fee, then let us look at the maps and then approve the entire project”.

Bashour, “That’s what I thought I was doing. You need to be specific so everyone on the board knows exactly what that means.” Chairman, “Absolutely”. Bashour, “Specific like 80% can be retail needs to be very specific so that Cissy knows what it is”. Cissy, “ that is the goal”.

Member Brutsch, “this is approved for a like to like. What if we get a not like for like, would we still require site plan in the future. Would it behoove the current owner to maybe come in in the next few months to apply?” Ms. Bashour stated it was unclear what member Brutsch meant.

Town engineer McCreary explained. “Different towns do things differently. When a new applicant comes in to a vacant space they need to go to the planning board. There is a town law that is in place to do that but New Lebanon does not have that law. The application would be made prior and when the plan comes together someone would give a review.”

Mr. McCreary, “If I remember correctly the town is moving towards an abbreviated site plan review or a waiver of site plan review. Just for this type of thing. So when the plan is put together and all of the different stores and businesses in each mall would be site plan specific for each site and someone would be given the ability to make the review. Retail- low impact- would need no site plan review, and it never comes to the planning board and it really doesn’t say they waived it and it is not required.”

Bashour, “the law needs to be in place”. Chairman Blatt, “We are going to fix that”. Bashour, “you need to start with the application. If someone wants to start a business in town they have to go to not a planning committee but the Zoning Enforcement Officer. Then they have to fill out a building permit application and none of those questions pertain to a business.”

Attorney Ferradino, “my recommendation would be a very detailed draft resolution and have it circulated in advance that the future owner and board have a road map, and the applicant will have it ahead of time. It would detail the square footage so that you are not relying on the minutes. As a draft resolution in advance of the meeting, the board would have reviewed it and then you can hone and tweak it to modify it in the meeting if you needed to. I think it makes sense for everybody to be working cooperatively so that we can document this in order to avoid this in the future.”

Chairman Blatt, “the applicant is asking on her map instead of using retail, you can put “B” use, the category itself isn’t too specific”. Ferradino, “we would have to look at it, as long as we document it and the applicant understands it if A & B are tied to some other document that is appended I think that makes a lot of sense”. Cissy, “I think Lori is referring to the fire code uniform classification”.

Ferradino, “I think we could think about that, the problem is that the code changes and the board doesn’t have any control over it”. Bashour, “There are things also on the zoning, site plan as opposed to special permit. I need some guidance on pertinent uses, on what I need or someone to interpret it for me, every time I come here because we are not all experts.”

Chairman Blatt adjourned the meeting at 8:30.

Respectfully submitted:

*Michelle Bienes*

Michelle Bienes  
Planning Board Clerk