

**Pembroke Planning Board**  
**Meeting Minutes**  
**November 14, 2023**  
(Approved November 28, 2023)

**MEMBERS PRESENT:** Brian Seaworth, Chairman; Rick Frederickson, Selectmen's Rep; Kathy Cruson, Brent Edmonds

**MEMBERS EXCUSED:** Robert Bourque, Vice Chairman, Clint Hanson

**ALTERNATES PRESENT:** Bryan Christiansen

**STAFF PRESENT:** Carolyn Cronin, Town Planner; Susan Gifford Recording Secretary

Chairman Seaworth called the meeting to order at 6:30 pm. Four Planning Board members were present. One alternate member was present. Chairman Seaworth designated Bryan Christiansen to vote for Clint Hanson. The Board of Selectmen has appointed Bryan Christiansen as a full Planning Board member, and he will be sworn in shortly.

**New Business**

**Citizen-Proposed Zoning Request**

Chairman Seaworth noted that an email went out regarding a citizen proposed zoning amendment about an issue that has been discussed by other boards. Town Attorney Steven Whitley is present to help us understand the issue from a legal viewpoint. His insight will be valuable as we get our questions answered and all will hear the same update. Member Cruson asked that we state the referenced topic. Chairman Seaworth stated that the reference is to the group home that went in at 160 Main Street. A citizen is requesting a change to the definition of "cooking facilities" and to definition of "family." Chairman Seaworth read the two proposed definition changes requested. In Dwelling Unit definition, oven/stove would be changed to cooking facilities. A family would be defined as a common ancestry/blood relation. There may be other issues.

Attorney Whitley stated this is a public meeting and it is being recorded. The town has not waived attorney client privilege. For me to answer questions in more depth, this would need to be a non-public meeting. I may decline to answer specific questions in public session. Selectmen's Rep Frederickson noted that the board understands this. If we would like an attorney response, the board could ask for an answer in writing in a few days.

Attorney Whitley stated that to change the definition of 'dwelling unit' and how cooking facilities are defined would expand throughout the town what a dwelling unit is. There would be potential consequences to town enforcement, density regulations and a ripple effect could create a lot more non-conforming uses. There are restrictions on development of a non-conforming use. Chairman Seaworth noted that a key point is whatever we change in zoning ordinance does not force an owner to use the new definition. The definition of dwelling unit would be grandfathered for all who relied upon a prior version.

Member Edmonds asked if "dwelling unit" is defined in State law. Attorney Whitley stated there are elements the unit must have for sleeping, waste disposal and kitchen facilities.

An Accessory Dwelling Unit (ADU) would be a dwelling and two dwellings would be a duplex up to six units would be a multi-family. Attorney Whitley stated that ADU is defined in state law as having sleeping, eating, cooking and sanitation facilities. Member Cruson asked if an ADU requires a separate entrance, and what are the tax implications of having an ADU? Planner Cronin stated Assessing would take the ADU into account and taxes could increase. Selectmen's Rep Frederickson stated you need to take out the eating element, which is flexible, and not required in the definition of dwelling unit. Member Christiansen asked if a teenager with his own bedroom and bath, with a microwave oven and air fryer in his room, would be a dwelling unit. Chairman Seaworth noted that houses have apartments that they do not admit to. Selectmen's Rep Frederickson asked does this definition change solve a problem? Is there a problem? I would like more information.

Attorney Whitley stated that a valid dwelling unit has an inspection and complies with the building code. Selectmen's Rep Frederickson stated that a stove has a separate hookup installed whether the appliance is in place or not. Chairman Seaworth noted that a stove is common language for cooking facilities. Member Cruson noted one can cook on a wood stove. Chairman Seaworth stated we are moving on to part two, the composition of a family. Member Cruson stated that from working in schools, she sees children in families that do not have common ancestry and/or related by blood. Member Christiansen stated that beyond/ within three generations, ancestry is not defined. Attorney common ancestry stated this is a very restrictive way to view family. The actual definitions of housing types do not have the word "family" in their definitions. If one is trying to regulate a recovery home, the Fair Housing Act becomes involved. If local regulation is discriminatory, that can expose a town to legal action. Selectmen's Rep Frederickson said the most prominent issue residents had was the perception of the need for a change of use. They saw a business in a residential setting. Chairman Seaworth referenced City of Concord and how they regulate differently. Attorney Whitley stated the City of Concord defines a rooming house as a building with bedrooms for rent, with common kitchen and dining facilities. Chairman Seaworth stated a key difference is that Pembroke specifies renting a unit as a rooming house. Pembroke may have meant to use the kind of definition that City of Concord uses, but a change now would have no impact on past decisions. Selectmen's Rep Frederickson stated I do not have a problem with the sober recovery house. No adverse issues have been reported. Attorney Whitley stated if you proceed to change the definition of dwelling unit, any community can be challenged. Member Cruson asked for examples of things that could go under two use categories. Attorney Whitley said short term rentals.

Member Christiansen stated that cities with a city council can fix issues at any meeting. They are not limited to once a year votes on zoning changes. Chairman Seaworth stated that the Planning Board has discussed this topic. Do we want to take any action? Selectmen's Rep Frederickson asked what makes 160 Main Street not need a change of use? Attorney Whitley stated that it is a single family residential use permitted by right. Chairman Seaworth stated the owner has rights of a property owner. Planner Cronin stated that building code and fire code also weigh in on change of use. The Code Enforcement and Fire Department may have checklists to meet for already established rules for a particular use. Planner Cronin stated that a property owner would reach out to the appropriate town department, but if they don't it's not long before a neighbor calls us

about a change in use. Some things that are not a Zoning change of use are still a Building Code change of use, for example, a group home of adults with intellectual disabilities. Member Cruson asked if there are no changes in the physical structure, does the owner need a Certificate of Occupancy? Attorney Whitley asked does a prospective property owner inquire does the property I am going to buy meet town regulations if I change the composition of who lives there? Member Edmonds stated that physical changes to properties is reported to Assessing on a yearly basis. Planner Cronin stated if there are no physical changes to a property, referrals come from neighbors. Member Christiansen stated I do not feel comfortable supporting a change that poses more questions than clarifies the issue. Chairman Seaworth stated that the consensus of the Planning Board is not to address the issue in upcoming zoning changes for 2024 Town Meeting. Planner Cronin will follow up with citizen.

### **Old Business**

#### **1. Zoning Amendments 2024**

- a. Residential Standards in Mixed Use Developments
- b. Sign Ordinance
- c. Floodplain Ordinance
- d. Manufactured Housing
- e. Wetlands

At 7:27 p.m. Chairman Seaworth opened discussion on zoning amendments for 2024. The sign ordinance has been fully reviewed. All board and legal comments have been incorporated and that proposal is ready to go forward to town meeting. The board needs to discuss whether the Mixed Use Ordinance needs more work. Member Cruson stated she was talking with Vice Chairman Bourque who asked would residential and commercial use be separated? What if the developer only moved forward with the commercial development and did not construct the residential part? Chairman Seaworth stated a Special Use Permit for Mixed Use is for cases not separated 50%/50% where it would be easy to subdivide the property. Member Cruson stated that subdivision application is an additional expense. How would we geographically separate the uses? The purpose of a Special Use Permit is to allow owners to propose an innovative way of mixing residential and commercial use in the same space. Selectmen's Rep Frederickson stated that the developer's proposal needs conditional approval from the Planning Board. Chairman Seaworth stated the Planning Board is looking at one proposal. Any development approved lately is not moving along as quickly as anticipated. Member Cruson stated that the developer would need to come back to the Planning Board for a change to the plan. Member Christiansen added a development could stay dormant. Chairman Seaworth noted developers have a lot of options. Developer could request waivers from the Special Use Permit.

Planner Cronin stated that you do not know how an ordinance is going to function until there is an actual case. We want to craft the wording to give control to the Planning Board, with the authority to say no to a proposal. The Special Use Permit is not guaranteed by right. The proposal must be integrated in a way that is harmonious. The Planning Board is allowed to waive specific requirements if they choose. Selectmen's Rep Frederickson stated that Planner Cronin has done an excellent job on the language for Mixed Use Special Use Permit to maintain control by the Planning Board and allow creativity by the developer. Chairman Seaworth stated that the Mixed Use Special Use Permit is for development in the Soucook River commercial zone. A residential lot imposes buffer requirements. We do not want commercial use to be held back. Planner Cronin suggested sending the Mixed Use Special Use Permit to final legal review. Selectmen's Rep Frederickson stated the ordinance is very close to right. Member Christiansen agreed to have our legal bases covered.

Planner Cronin stated that the December meeting is a combined work session and business meeting on December 12, 2023. Zoning ordinance items b. through e. are ready to go to public hearing. All the tracked changes and attorney comments on the Sign Ordinance have been incorporated to this point. On page 20 there is a minor change to Electronic Signs. Planner Cronin has created a Master List showing how the items will look on the warrant. Sign ordinance changes due to court decision are all one article. Ordinance changes that are substantial changes are a separate article. FEMA has provided the required language for Floodplain Ordinance. Wetlands article is a clarification. Item 7 is the Mixed Use Development ordinance. Planner Cronin suggested waiting for legal review before motions to bring to public hearing. The town must post actual language before the first public hearing. If any changes are made, the town needs to have a second public hearing. Chairman Seaworth agreed that the Planning Board should hold off on voting to post the proposed zoning changes and do so on December 12 when we have the final language. We can schedule a January 2024 public hearing after legal review is complete.

### **Minutes**

October 10, 2023

**MOTION:** Selectmen's Rep Frederickson moved to approve the October 10, 2023 minutes as presented. Member Cruson seconded.

**VOTE:** B. Seaworth – Y                      B. Christiansen – Y  
K. Cruson - Y                      R. Frederickson – Y  
B. Edmonds -                      Abstain

**MOTION TO APPROVE OCTOBER 10, 2023 MINUTES AS PRESENTED PASSED ON A 4-0-1 VOTE.**

### **Miscellaneous**

1. Correspondence - none
2. Committee Reports – Roads Committee – Chairman Seaworth stated that Roads Committee met last week. This year's road projects are all wrapped up. A minor encumbrance is carried forward to next year. Eversource has agreed to move one electric pole located in front of the funeral home out of the middle of the sidewalk.

Conservation Commission – Member Edmonds reported that the Conservation Commission met last night. They reviewed an applicant's comments on a plan. A sizable donation may be coming from the Phipps estate. The Conservation Commission could purchase additional land abutting or near current holdings. The Commission discussed land application of biosolids. The Society for Protection of NH Forests has been using biosolids on its land. A farmer who rents their land believes it fortifies his crops. However, NRCS advises that they are no longer funding acquisition of land that has had biosolids spread on it. Member Edmond noted that NH DES has a more moderate approach. Chairman Seaworth noted that no funding is currently at risk.

**3. Other Business - none**

**4. Planner Items** – Planner Cronin reported that Regional Planning is organizing a Range Road presentation to the Planning Board and other boards with the findings of their research. A pre-construction meeting was held for the Kimball Street 6-unit. Technical Review Committee (TRC) was held for five new applications for the November 28, 2023 business meeting. One is a proposed subdivision of two new lots on a cul de sac. One is office headquarters construction on Silver Hill Drive. New England Flower Farms is proposing to build housing for its seasonal (nine-month) workforce. A lot line adjustment and plans for four dormitory buildings were reviewed. The housing proposed is sixteen pods that each hold 16 people because occupancy fluctuates. Each of the four buildings will have shared common space. Because there is no sewer connection available, the applicant plans to build in phases. Oddball Brewing is moving production off site. They submitted a Major Site Plan to expand the mezzanine, add a bar, additional seating, and a bathroom. The board should expect thick packets for the November 28, 2023 agenda.

**MOTION:** Member Edmonds moved to adjourn the meeting. Seconded by Selectmen's Rep Frederickson. Without objection the meeting was adjourned at 8:19 p.m.

Respectfully submitted, Susan Gifford, Recording Secretary