

**PEMBROKE PLANNING BOARD
MINUTES OF MEETING
(ADOPTED)
October 10, 2017**

MEMBERS PRESENT: Alan Topliff, Chairman; Brian Seaworth, Vice Chairman; Larry Young, Sr.; Brent Edmonds; Kathy Cruson; Selectman's Rep. Sandy Goulet

ALTERNATES PRESENT: Robert Bourque

EXCUSED: Richard Bean; Kellie Dyjak

STAFF PRESENT: Everett Hodge, Code Enforcement Officer; Stephanie Verdile, Town Planner; Jocelyn Carlucci, Recording Secretary

Chairman Topliff called the meeting to order at 7:00 pm. He noted Member Cruson would be late. Alternate Member Bourque agreed to vote in place of Member Cruson until she arrived.

Old Business— 2018 Zoning Amendment discussion
Master Plan Steering Committee update

Proposed Amendment #1:

Ms. Verdile reviewed Proposed Amendment #1 (§143-18.1).

Alternate Member Bourque asked if the condominium conveyance sited in House Bill #265 should be mentioned in the proposed language.

Ms. Verdile said that is why she recommends the Board adopt the proposed language that states the RSA "as amended". It would cover those obstacles that the Town's regulations do not.

Vice Chairman Seaworth said in this case, the state law is a blanket prohibition. The cross reference does not have any legal effect but it has a referential affect. It gives applicants the "heads up" that they must also refer to the State regulations.

Ms. Verdile pointed out her proposed language should be changed to reflect "RSA 674:71-73 as amended".

After a short discussion, it was agreed that §143-18.1 Accessory Dwelling Units should read as follows:

One Accessory Dwelling Unit (ADU) shall be permitted in accordance with the NH Planning and Land Use Regulations RSA 674:71, 674:72, 674:73 as amended. Further, one ADU shall be permitted in all zones that allow single Family Detached Dwelling Units by special exception from the zoning board of adjustment with the following stipulations.

- A. An accessory dwelling unit shall be clearly incidental to the primary use of the property for a single-family dwelling. Such accessory living space shall not exceed 750 square feet and all appropriate town building codes shall be followed.
- B. An accessory dwelling unit may be constructed either within or attached to the single-family dwelling.
- C. At least one interior connecting door or other access for persons to pass between the accessory dwelling unit and the single-family dwelling must be included.
- D. Septic system design/capacity shall be approved by the NH Department of Environmental Services and provided to the Town.
- E. One off street parking space shall be provided for an accessory dwelling unit, however, no new curb cut from the street shall be constructed.
- F. Exterior construction and material shall be uniform and compatible with the single-family dwelling.
- G. There shall be only one electric, water, and sewer service for both units.
- H. This section of the ordinance does not preclude the applicant from having to comply with applicable sewer and water connection fees.

MOTION: ALTERNATE MEMBER BOURQUE MOVED TO ACCEPT THE PROPOSED LANGUAGE AND SEND ZONING AMENDMENT #1 AS AMENDED FOR FIRST PUBLIC HEARING TO BE HELD ON NOVEMBER 14, 2017. SECONDED BY SELECTMEN'S REP. GOULET. UNANIMOUSLY APPROVED.

Proposed Amendment #2:

Chairman Topliff recalled the original proposal was to strike this ordinance entirely because the ZBA had not used it in a number of years. He said a number of Board members felt that just because it was forgotten does not mean that it does not have value. He also pointed out that Mr. Hodge indicated that it created hardship in the past for the ZBA in terms of issuance of a special exception.

Chairman Topliff said it was suggested that the ZBA request input from the Planning Department. The Board's thought was that the Code Enforcement Officer would know when an issue such as this was on the ZBA agenda and the Code Enforcement Officer and the Planner could consult others or decide to request input from the Planning Board as they see fit.

Mr. Hodge said the language seemed workable. He said if anything came before the ZBA for commercial, it would go to the Planning Board anyway. The odd part of this section is that it is looking for opinions from the Health Officer and the Conservation Commission.

He said if the Board adds the exception for residential use it would not place a hardship on the applicant.

Chairman Topliff said it created a hardship in the past when someone came before the Planning Board for an ADU over the aquifer. This proposed language would attempt to minimize the hardship on residential uses.

In proposed Amendment #2, the following language is proposed:

- F. Special Exceptions: For use which may be allowed by special exception in the underlying zoning district the Zoning Board of Adjustment must first find, in written findings of fact, that all of the following are true:
- (1) The proposed use will not have a detrimental effect on the quality of the groundwater contained in the aquifer by directly contributing to pollution or by increasing the long-term susceptibility of the aquifer to potential pollutants;
 - (2) The proposed use will not cause a significant reduction in the long-term volume of water contained in the aquifer, or in the storage capacity of the aquifer;
 - (3) The proposed use will discharge no wastewater on site other than that which is permitted under the provisions of this section; and
 - (4) The proposed use complies with all other applicable sections of this section.

The Zoning Board of Adjustment may require that the applicant for a special exception provide data or reports prepared by a professional engineer or qualified groundwater consultant to assess any potential damage to the aquifer that may result from the proposed use. The Zoning Board of Adjustment may engage such professional assistance as it requires to adequately evaluate such reports and to evaluate, in general, the proposed use in light of the above criteria. Costs for any of the above-mentioned services shall be paid by the applicant.

Prior to rendering a decision on an application for a Special Exception, the Zoning Board of Adjustment shall request input from the Planning Department, Conservation Commission, and the Health Officer as to whether the proposed use is consistent with the purpose of this section.
[Amended 3-13-2007 Town Meeting by Amendment No. 1]

Exemption: The provisions of this section shall not apply to special exceptions granted relating to one or two family residences and Accessory Dwelling Units.

MOTION: SELECTMAN'S REP. GOULET MOVED TO ACCEPT THE PROPOSED LANGUAGE AND SEND ZONING AMENDMENT #2 AS AMENDED FOR FIRST PUBLIC HEARING TO BE HELD ON NOVEMBER 14, 2017. SECONDED BY MEMBER YOUNG. UNANIMOUSLY APPROVED.

Proposed Amendment #3 (§132:42 Commercial Kennels):

Chairman Topliff said Commercial Kennels are not included as a home business because it creates a nuisance for neighbors (barking dogs and traffic).

The following language was proposed:

For commercial kennels the following special conditions shall apply:

A. (Reserved)

Editor's Note: Former Subsection A, which required compliance with licensing requirements, was repealed 3-13-2007 by Amendment No. 5.

B. A commercial kennel shall not be considered a home business.

[Added 3-11-2008 Town Meeting by Amendment No. 2]

C. A new commercial kennel shall be required to undergo site plan review process;
[Added 3-11-2008 Town Meeting by Amendment No. 2]

D. No outdoor commercial kennel shall be located less than 400' from the front lot line and 200' from the rear and side lot lines;

[Amended 3-11-2008 Town Meeting by Amendment No. 2]

E. No indoor commercial kennel shall be located less than 100' from the front lot line and 50' from the rear and side lot lines;

[Added 3-11-2008 Town Meeting by Amendment No. 2]

F. One 12 square foot free standing sign shall be permitted in accordance with **143-62 Dimensional Table of Signs**, or with dimensions compliant with **143-62 Dimensional Table of Signs**, whichever is more restrictive;

[Added 3-11-2008 Town Meeting by Amendment No. 2]

MOTION: ALTERNATE MEMBER BOURQUE MOVED TO ACCEPT THE PROPOSED LANGUAGE AND SEND ZONING AMENDMENT #3 AS AMENDED FOR FIRST PUBLIC HEARING TO BE HELD ON NOVEMBER 14, 2017. SECONDED BY SELECTMAN'S REP. GOULET. UNANIMOUSLY APPROVED.

Proposed Amendment #4:

Mr. Hodge said he is not changing the Table of Uses, but is proposing to make a reference to the definition to Regulation 143, Note 10 in order to make an applicant aware that there is additional information. He said that he would also be removing Note 9.

After a short discussion, it was agreed that Ms. Verdile and Mr. Hodge should review the Zoning Amendments for #4 and report their changes at the next meeting.

Proposed Amendment #5:

Mr. Hodge reported that under the current parking regulations, #4 shall read:

In addition to the parking requirements specifically mentioned in table §143-46, additional spaces be required by the Planning Board for visitor, employee and staff or other required parking.

Mr. Hodge said that many times it was found that applicants overlooked employee and staff parking.

Vice Chairman Seaworth said that he hoped that the language was strong enough to require staff parking without the Board or Mr. Hodge having to calculate additional staff parking spaces.

Alternate Member Bourque recommended that the Board consider changing the regulations to reflect that if, for example, a business had a combined capacity of 50 occupants, the parking for the 50 occupants would include staff, visitors, occupancy. A formula should be proposed in the future.

The following proposed language was agreed upon:

- 1) Where one building or site is used for more than one use, parking requirements shall be computed for each use as if it were a principal use, except as provided for under Article XI.**
- 2) Where the computation of parking spaces results in a fractional number it shall be counted as one parking space.**
- 3) For any use other than one specifically mentioned in §143-46, the parking requirements shall be as for the closest similar use as determined by the Code Enforcement Officer.**
- 4) The Code Enforcement Officer shall assess the need for parking in addition to that specified in §143-46 and make any recommendations for additional parking to the Planning Board.**
- 5) In addition to the parking requirements specifically mentioned in table §143-46, additional space may be required by the Planning Board for visitor, employee and staff or other required parking.**

After a short discussion, it was decided that Mr. Hodge review and possibly rewrite Proposed Amendment #5.

Member Cruson arrived at 7:55 p.m.

Chairman Topliff appointed Alternate Member Bourque to vote in Member Bean's absence.

Proposed Amendment #6 – Definition of Dwelling Unit:

Mr. Hodge said he researched Bow, Hooksett, and Allenstown and spoke with Paulette Malo of the Sewer Commission.

He proposed the following language:

Dwelling Unit – Any dwelling unit for rent, including but not limited to a room or suite of rooms for the use of one or more persons as a housekeeping unit with space for eating, living, sleeping, sanitary facilities and containing provisions for cooking. To include but not limited to portable or permanent cooking appliances.

Vice Chairman Seaworth read aloud the old definition for Dwelling Unit.

Mr. Hodge said that there have been a few cases where a three-unit building was converted to a five-unit building because the owner placed a microwave or crockpot in a unit. He said that there was a case where a single family dwelling turned into a three-unit building.

At the present time, if the homeowner removed the stove, the dwelling unit would go away. Mr. Hodge said that once he completes his inspection and leaves the premises, the homeowner reinstalls the stove and continues to rent the space as an additional rental unit.

Mr. Hodge said that Ms. Malo asked that **“To include but not limited to portable or permanent cooking appliances”** be added. By making the areas containing the cooking appliances considered a dwelling unit, Mr. Hodge said that he could then go in and “get rid of them.” He said that Mr. Jodoin wanted illegal dwelling units to be eliminated.

Alternate Member Bourque clarified that Mr. Hodge was defining a legal dwelling unit. Mr. Hodge said yes.

Vice Chairman Seaworth said the new definition was trying to define and regulate a dwelling unit for rent within the definition. He said that it might be best to separate them by creating a definition and then creating a regulation that includes restrictions on dwelling units making it illegal.

Vice Chairman Seaworth also said now, it is unclear whether Mr. Hodge is trying to define a dwelling unit, a rental dwelling, or an owner-occupied unit. If Mr. Hodge intended to define all these concepts, then it might be necessary to have additional definitions. It also may be necessary to create regulatory language that goes beyond the definition to be more explicit about what the Board is trying to say.

Mr. Hodge said for example, he receives calls from the Welfare Department and finds someone is living in a room with a stove in it. He tells them that they have to remove the stove because under the current definition, if the stove is removed, it is no longer a dwelling unit. The homeowner then evicts the person and removes the stove. Once Mr. Hodge leaves the premises, the stove is reinstalled and the homeowner re-rents the unit.

Member Cruson said this was not a language issue, it seemed to be an enforcement issue.

Mr. Hodge said they need the proper language in order to enforce it. Mr. Jodoin and Ms. Malo told him that the definition was too weak.

Chairman Topliff asked Mr. Hodge how he would know if the stove is ever taken out or reinstalled since he would never see it. He said that the language can be changed but if Mr. Hodge is not there to observe what is being done, it would not make any difference.

Alternate Member Bourque said the way the definition is written, he was confused on what Mr. Hodge was trying to do.

Mr. Hodge reiterated that Mr. Jodoin told him that the definition had to be changed.

Chairman Topliff said that Mr. Jodoin should come to the Planning Board and explain specifically what he is trying accomplish with the Dwelling Unit definition.

Mr. Hodge agreed to work on the language for Proposed Amendment #6.

Proposed Amendment #7:

MOTION: SELECTMAN'S REP. GOULET MOVED TO ACCEPT THE PROPOSED LANGUAGE AND SEND ZONING AMENDMENT #7 AS PRESENTED FOR FIRST PUBLIC HEARING TO BE HELD ON NOVEMBER 14, 2017. SECONDED BY MEMBER YOUNG. UNANIMOUSLY APPROVED.

Proposed amendment #8:

MOTION: Alternate Member Bourque moved to accept the proposed language and send Zoning Amendment #5 as presented for first Public Hearing to be held on November 14, 2017.

There being no second, the motion was denied.

Mr. Hodge said the Board talked about removing the word "adjacent". By doing so, the setback issues in a neighborhood could be addressed at the ZBA. Mr. Hodge was in agreement with this.

Chairman Topliff said that the intention was not to create more of a setback hardship on a new building being constructed than what was existing for the buildings in that neighborhood.

Chairman Topliff said that there are many buildings in the B1, B2, and R1 zones that have been there for years that do not meet current setbacks.

Mr. Hodge said removing the word "adjacent" would eliminate the potential of duplicating the setbacks based on any house on the street rather than just the abutting houses. He would not know which house on the street to choose to duplicate its setbacks. Allowing

the ZBA to make the decision would be best according to Mr. Hodge and Ms. Verdile. The ZBA can also require a certified plot plan if needed.

Chairman Topliff said he would be more comfortable if language was added that specifically gave guidance to the ZBA.

Chairman Topliff asked if the Board would like to table Amendment #8 until more time could be spent on it.

Selectman's Rep. Goulet said she does not feel that the Planning Board should be telling the ZBA what to do. She said if the Planning Board gives the ZBA language, then the Board is trying to direct them in a certain way which she does not agree with.

Mr. Hodge then suggested changing the word "adjacent" to "abutting" so that the ZBA would only deal with the abutters.

Ms. Verdile read aloud §143:103B Non-Conforming Lot of Record. She explained that the regulations require that if an applicant cannot meet the setbacks, they must go to the ZBA. In her opinion, Note #5 could be eliminated.

Chairman Topliff said the Board's intention was to grant some relief to those building in a neighborhood where most of the buildings do not meet current zoning. He said he was not sure that the ZBA would understand that the Planning Board does not want to place an additional burden on someone who wants to build in a particular neighborhood.

Vice Chairman Seaworth agreed.

He also said that a note to guide the process and make the ZBA understand that the applicant would like to match the existing setbacks of other buildings would be helpful.

Ms. Verdile suggested that she and Mr. Hodge review the definitions again and find an appropriate location for Note #5 to let people know where to go.

Chairman Topliff pointed out two things that should be written: (1) Language that encourages people to apply to the ZBA; and (2) Language that lets the ZBA know that the Planning Board feels that allowing reductions in setbacks that are in concert with the neighborhood is acceptable.

Mr. Hodge said that the ZBA must determine, under the criteria for a variance, that it is within the "spirit of the ordinance". He said that that is why when someone has a 15' setback and wants a 4' setback, it is not in the "spirit of the ordinance" and is denied. He said that the ZBA follows a precise process. They need language that says that when setback relief is needed it must meet the character of the neighborhood.

Vice Chairman Seaworth said that it should be clear that relief would be granted when it matches the character of the neighborhood. Since the ZBA follows a very precise process, it would be best to have something in writing that can be referred to.

Mr. Hodge said that he does not think that the Planning Board should be telling the ZBA what to do. Chairman Topliff said that that was not what they were trying to convey. Further discussion was continued to a future meeting.

1. Publications

Ms. Verdile said that she received two issues of Business NH Magazine.

2. Committee Reports-

Roads Committee: Vice Chairman Seaworth said that two applications – the Golf Course apartments and the Fourth Range Road/Robinson Road/Flagg Road subdivision. A conceptual for Robinson Road was presented.

The applicant proposed paving the Robinson/Flagg Road and creating a development that would loop around. There would be one-way in and one-way out on the same road even though there would be two entrances.

Secondly, the applicant was trying to avoid paving Fourth Range Road which only encouraged him to create a new road next to a town road. The Roads Committee encouraged the applicant to use Fourth Range Road. They preferred creating a four-way intersection and have two entrances using two different town roads to the intersection. They are redoing their conceptual plan.

The applicant was also under the impression that they needed to pave Fourth Range Road all the way to Church Road. The Roads Committee told them that the ordinance required them to pave to the end of their property. They are not legally obligated to pave past their property.

The Roads Committee did not discuss offsite improvements.

Member Cruson said that the Town Pound near the Robinson property is the geographical center of the Town. She said that it would be wise for Pembroke to look at that development and discuss the donation of acreage in the event that Pembroke needed a place to have an extra fire truck or Town facility because of the distance to present Town facilities.

Chairman Topliff said that it might be helpful to have that conversation with the Board of Selectmen first.

Selectman's Rep. Goulet said that she would bring it to their attention at the next Board of Selectmen meeting.

Vice Chairman Seaworth said that the Roads Committee was asked through, the CIP process, when Main Street would be redone. The process would include drainage, utilities, sidewalk considerations, and moving utility poles from one side of the street to the

other. The engineering proposal was received but then was returned to him because the engineer was under the impression that the project would begin next spring. The Committee is looking at a longer time period.

Board of Selectmen: Selectman's Rep. Goulet said that they just took care of housekeeping items.

Conservation Commission: Member Edmonds said the same two projects (Golf Course and Robinson Road) came before the Commission. With regard to the Robinson Property, the plans showed that they proposed improvements to Fourth Range Road for emergency vehicle access. The comments that came out of the Commission was that they are opposed to any upgrade to Fourth Range Road. They thought that any upgrade in that area would invite more range road abuse by ATVs.

Member Young said that he would think that any upgrade to Fourth Range Road would eliminate ATV use.

Vice Chairman Seaworth said the Roads Committee did not like that either. He said that there is an access from a development street that would be unimproved and go onto Fourth Range Road. The Committee struggled with how fire trucks would get back there if it was completely unimproved and, if the applicant would maintain the access well enough to get emergency vehicles through if it was not a road. The discussion then moved to why they did not pave that road in the first place. The Committee also voiced that there would be resistance to putting pavement on a portion of Fourth Range Road.

Member Edmonds said that in the past the Conservation Commission has been open to upgrading the range roads for recreation trails. An argument could be made that this could be incorporated as a recreation trail and also an emergency vehicle access.

Vice Chairman Seaworth said that they also discussed upgrading Flagg Road. Flagg Road is a Class 6 town road. Even if the Planning Board says that the applicant must pave both roads, the applicant would still have to go through the Board of Selectmen and a State process that is entirely independent of what the Board approves.

Master Plan Update -

Chairman Topliff reported that the Community Visioning Forum will be held on October 28, 2017 from 9:00 a.m. to 12:30 p.m. at the Pembroke Hill School. The purpose is to invite people to provide the Planning Board with input on the future of Pembroke.

The basic format would cover 5 primary topic areas: Land Use and Economic Development, Transportation, Housing and Community Recreational Facilities, Energy and Natural Cultural Resources. There would be two time slots – both 45 minutes each. He said that it would be helpful if Planning Board members familiar with the topics were present to participate in the conversation and help answer questions.

Vice Chairman Seaworth volunteered to help with Transportation but was unable to find a second leader.

Chairman Topliff also said that Ms. Dyjak agreed to lead Housing. He asked Member Cruson if she would be interested in participating in the Housing discussion. Member Cruson agreed but did not want to be a leader.

Ms. Verdile and Rose Galligan will lead Community and Recreational Facilities.

Natural and Cultural Resources will be lead by Brian Mrazik of the Conservation Commission. Member Edmonds agreed to sit in on that group.

Chairman Topliff also encouraged the Board to participate as greeters. He said that it would be helpful to have members of the Board welcome participants and answer any general questions that they may have. He also said that it would be a perfect opportunity for the Board of Selectmen to introduce themselves to the public and share their involvement with the community.

Ms. Verdile said that she would send copies of the proposed list of questions that are part of the discussion groups to those Planning Board participants.

3. Planner Items-

Ms. Verdile said she would like a motion to allow Chairman Topliff to sign the lot merger for MJR Realty Holding, the new owners of Petit Funeral Home. They would like to merge three lots.

MOTION: ALTERNATE MEMBER BOURQUE MOVED TO AUTHORIZE THE CHAIR TO SIGN THE VOLUNTARY LOT MERGER. SECONDED BY SELECTMAN'S REP. GOULET. UNANIMOUSLY APPROVED.

MOTION: Selectman's Rep. Goulet moved to adjourn the meeting. Seconded by Alternate Member Bourque. Unanimously approved.

The meeting adjourned at 9:00 p.m.

Respectfully submitted,
Jocelyn Carlucci, Recording Secretary