

**Pembroke Planning Board
Minutes of Meeting
(ADOPTED)
November 24, 2015**

MEMBERS PRESENT: Alan Topliff, Chairman; Brian Seaworth, Vice Chairman; Robert Bourque; Kevin Krebs; Larry Young, Sr.; Kathy Cruson

ALTERNATES PRESENT: Brent Edmonds

EXCUSED: Fred Kline, Selectmen's Rep.

STAFF PRESENT: Stephanie Verdile, Town Planner; Matt Monahan, CNHRPC Circuit Rider; Jocelyn Carlucci, Recording Secretary

Chairman Topliff called the meeting to order at 7:00 p.m.

Ms. Verdile said that this would be the first public hearing on Zoning Amendments 2 and 3. She discovered that the notice for the December 8, 2015 public hearing on Zoning Amendments 4 and 5 was required to be sent to the newspaper. She did so.

Everyone in the B1 zone was notified of tonight's public hearing. She did not receive any inquiries.

New Business – 1) Public Hearing for 2016 Zoning Amendments.
2) Approve 2016 Planning Board Meeting Schedule.

Zoning Amendment #2:

Chairman Topliff said the Board agreed that crematoriums should only be permitted in the C1 zone. A variance would be required in the B1 and LO Districts.

Ms. Verdile said she sent an e-mail to Tom Petit of Petit Funeral Home about the November 10, 2015 meeting and received no response.

Member Cruson said she spoke with Mr. Petit and he said he was not interested in building a crematorium anywhere in Pembroke.

Chairman Topliff opened the public hearing at 7:08 p.m.

There being no comments from the Board or the public, Chairman Topliff closed the public hearing at 7:09 p.m.

MOTION: Member Bourque moved to accept the proposed language and send Zoning Amendment #2 as presented for voting at the March 2016 Town Meeting. Seconded by Member Krebs.

VOTE: A. Topliff – Y L. Young – Y B. Seaworth – Y

MOTION TO ACCEPT THE PROPOSED LANGUAGE AND SEND ZONING AMENDMENT #2 AS PRESENTED FOR VOTING AT THE MARCH 2016 TOWN MEETING PASSED ON A 6-0 VOTE.

Zoning Amendment #3:

Chairman Topliff said the Code Enforcement Officer asked that the Board stiffen the Recreational Vehicle regulation so he would have better enforcement capability for someone using a recreational vehicle outside of a licensed campground without a proper sewer connection. It was suggested to reference the applicable State Health and Sanitary Disposal Regulation which would then give the Health Officer the ability to correct the situation. The Board and the Code Enforcement Officer agreed.

Chairman Topliff opened the public hearing at 7:11 p.m.

There being no comments from the Board or the public, Chairman Topliff closed the public hearing at 7:12 p.m.

MOTION: Member Bourque moved to accept proposed language and send Zoning Amendment #3 as presented for voting at the March 2016 Town Meeting. Seconded by Member Krebs.

VOTE: A. Topliff – Y
K. Krebs - Y

L. Young – Y
K. Cruson – Y

B. Seaworth – Y
B. Bourque - Y

MOTION TO ACCEPT THE PROPOSED LANGUAGE AND SEND ZONING AMENDMENT #3 AS PRESENTED FOR VOTING AT THE MARCH 2016 TOWN MEETING PASSED ON A 6-0 VOTE.

Proposed Zoning Amendment #4:

Chairman Topliff said the Board struggled when working through the lot requirements for a lot of record on Kimball Street. The owner wanted to build a house on it. At the time that the lot was created, it was identified as a lot of record and was established prior to zoning regulations. If the Board enforced the current setbacks, it would have been very difficult for a house to be built on the lot.

Ms. Verdile said the language presented in the staff report was from the Board's discussion at the last meeting along with Mr. Hodge's suggestions. The Town Attorney suggested:

- A. The lot of record complied with the minimum area, frontage, width, and depth requirements, if any, of the Zoning Ordinance then in effect at the time it was created; and
- B. At least 2 of the applicable setbacks can be met and the structure is located not less than 10' from any property line.
- C. The lot of record has frontage on a Class V, or better, road.

The Attorney's suggested language is what was noticed in the paper for the December 8, 2015 meeting.

Member Bourque said he disagreed with the 10' setback on 2 sides. He opposed backdating setback requirements for an existing lot of record because the lot was already approved at the time that it was created.

Chairman Topliff said the village was known for its non-conforming lots of record. When someone wants to build a house on the non-conforming lots, setbacks become an issue.

Member Bourque said if a lot became a lot of record in the 1940s, those lot requirements at that time should still stand. Ms. Verdile said there was no zoning in place for those lots to conform with. If there were lots that were created in the 80's than the setbacks that were place in the 80's would apply.

If there were no zoning regulations when the lot was created the Town needs some type of regulations in place in order to have that lot comply with some health and safety standards while at the same time recognizing they can't meet all current standards. She said that the one purpose of zoning is to phase out nonconformities and allowing someone to build without setback regulations is continuing a non-conformity.

Member Bourque asked if the Building Department would research the setback requirements for lots that were established in the past or if the Department would just require the lot owner to conform to the proposed 10' setback.

Chairman Topliff said research would have to be done in order to find out what the zoning regulations were at the time that a non-conforming building lot was approved.

Ms. Verdile said the research would be done by property owner and the deed for the lot would identify the year the lot was created. The Assessing Department could help research. Mr. Monahan said that Town reports may be helpful.

Ms. Verdile said the present minimum setback for the B2 District is 10 ft. and that is the least restrictive distance of the all the setback requirements.

Vice Chairman Seaworth said the proposed change does not help anyone.

Chairman Topliff said at least it gives the Board a "middle ground".

Ms. Verdile said the Kimball Street example there was nothing stopping the owner from building up to the property line.

Member Bourque pointed out that in the 1940s to the 1960s many lots were 50' x 100' or 50' x 50'. If 10' was subtracted from either side of a lot to build on, it would cause a problem.

Member Bourque suggested 10% of the frontage for a setback.

Alternate Member Edmonds said that the conversation began discussing grandfathering. He said he believed strongly that if the lot of record was established 50-60 years ago under the conditions of that time, it is not fair to impose updated standards on the lot.

Member Cruson and Member Krebs agreed.

Chairman Topliff recapped by saying the Board would prefer leaving paragraph A in place:

A. The lot of record complied with the minimum area, frontage, width, and depth requirements, if any, of the Zoning Ordinance then in effect at the time it was created; and

striking paragraph B entirely, and leave C to read as proposed in the Updated Staff Report:

B. The lot of record has frontage on a Class V, or better, road.

Ms. Verdile cautioned the Board about not imposing any zoning restrictions and allowing a building to be built anywhere on a nonconforming lot. She said the Board could be perpetuating a nonconformity by allowing a structure to be built on a property line or on a road right-of-way line.

Member Bourque said he was opposed to a 10' setback on 2 sides because on a 50' x 50' lot, there would only be 30' to build a structure. By allowing 5' on either side for a total of 10', or 5' on the front and back of a lot would be more workable in a 50' x 50' lot.

Ms. Verdile said an applicant still has an opportunity to meet two of the setbacks and if they can't meet the minimum of the proposed 10' they could apply for a variance if necessary.

Mr. Monahan said it would be practical to stay out of the Town right-of-way. All other setbacks should be in character with the neighborhood.

After further discussions, the consensus of the Board was to require a distance between 2 abutting structures for fire safety.

The consensus of the Board was they would accept 5' from a structure.

Chairman Topliff asked Ms. Verdile to ask the Town Attorney if she would have issues with reducing it from 10' to 5' and not having a side setback requirement but some minimum separation between abutting structures.

Zoning Amendment #5:

With regard to the Back Lot definition, Section 143-23 Back-lot access, and Section 205-37 of the Subdivision Regulations, Ms. Verdile said she spoke with the Town Attorney who confirmed that a Town cannot legally tell someone they cannot build on a lot. She said the definition: "Back Lot-A lot laid out with less than the required frontage which cannot be built upon." Needs to be changed and Section 143-23 Back-lot access and Section 205-37 are in conflict with other sections of the ordinance and regulations. For now the Board can

work on the ordinance amendments and amend the Subdivision Regulations at a later date.

Chairman Topliff argued if a new lot was created today and did not have frontage on a Class V road, the owner would not be able to build on it. He asked how it would be different from telling someone that they could not build on a Back Lot.

Ms. Verdile said boards and communities should not create lots that don't meet current zoning (unless there was a variance granted) because that is creating a non-conforming lot and RSA 674:41 is in place to allow owners to build on non-conforming back lots without the required frontage.

Chairman Topliff asked if Ms. Verdile was saying if someone owned 50 acres on a Class VI road and wanted to subdivide the lot into 3 wood lots, the Board should not allow it. Ms. Verdile said yes because it would be creating non-conforming lots since it is not on a Class V or better road.

Chairman Topliff pointed out a lot may be non-buildable now but, in the future, if someone upgraded the road to a Class V road, the lots would then be buildable and in conformance.

Ms. Verdile said RSA 674:41 is the State's way of acknowledging that there are non-conforming lots and the statute allows people to build.

Member Young pointed out a backlot is not a problem until someone wants to pull a building permit. Pembroke's definition indicates that a person cannot build on a back lot.

Chairman Topliff said if they meet all Pembroke's criteria and the Board of Selectmen give them permission to build on it, it no longer meets the definition of a backlot.

The Board's concern is not to limit a lot's ability to be built upon in the future.

The discussion was tabled.

Old Business – Minor Site Plan/TRC Committee requirements review

Planning Board Schedule: Ms. Verdile said the November 8, 2016 work session falls on election night. The consensus of the Board was not to meet on November 8, 2016.

Vice Chairman Seaworth pointed out that February 9, 2016 is the primary election day. The consensus of the Board was not to meet on February 9, 2016.

Minutes- November 10, 2015

MOTION: Vice Chairman Seaworth moved to approve the November 10, 2015 Meeting Minutes as amended. Seconded by Member Young. Approved with 2 abstentions – Members Krebs and Bourque.

Miscellaneous

1. Correspondence- Ms. Verdile received another crematory complaint. This time it was from the Dirt Doctor. She spoke with the crematory property owner.

Tri-Town Ambulance Committee – Member Bourque said that they met last week to discuss employees and that the budget is awaiting final approval.

2. Planner Items-

Mr. Monahan said the Board of Selectmen received a letter for requesting a volunteer for the Brownfield Advisory Committee. It could benefit a town that has a downtown or commercial area. He said the Committee would help distribute money for assessments. Ms. Verdile said she would speak with the Town Administrator about joining the committee.

3. Construction Escrow- Ms. Verdile said Allgeyers' project is not complete and would hope to be completed in the spring.
4. Board Member Items- Member Bourque said the Next Level Church received ZBA approval for a Church in the C1 District. Ms. Verdile said it is an appealable decision.

MOTION: Member Krebs moved to adjourn the meeting. Seconded by Member Bourque. Unanimously approved.

The meeting was adjourned at 9:03 p.m.

Respectfully submitted,

Jocelyn Carlucci, Recording Secretary