

Pembroke Planning Board
Meeting Minutes
May 9, 2023
Approved May 23, 2023

MEMBERS PRESENT: Brian Seaworth, Chairman; Robert Bourque, Vice Chairman; Rick Frederickson, Selectmen's Rep; Kathy Cruson, Brent Edmonds, Kevin Foss, 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. Seven members and one alternate member were present.

Correspondence

1. DRI – Benjamin Franklin Charter School, Loudon.

Parent/Board of Director, Jon Rokeh, met with the Planning Board at the beginning of the meeting. Planner Cronin explained that the Town of Loudon designated the charter school as a Development of Regional Impact due to possible increased traffic in surrounding towns due to student drop off and pick up. The Planning Board received notice of DRI determination, a copy of meeting minutes where DRI was discussed, and the recommendations from the traffic study. The Benjamin Franklin Charter School plans to open in fall of 2023. Because students could travel down Ricker Road, Pembroke was included in the DRI notification.

Jon Rokeh, parent and Board Member of the school, stated that the school will be a vocational-technical school. In the plans, there are two lanes for pickup and drop off which can serve forty waiting cars at a time if needed. Dropoff and pickup times will be staggered by grade. Mr. Rokeh stated he lives one mile from the new charter school. His children will attend in the fall. There is ample parking for staff, senior students, and junior students. The first year, the school will have grades 6, 7, and 8. Each class will have twenty-five students. One class level will be added each year. At full buildout, the school will serve grades 6 through 12, and contain 175 students. There is enough space for 4-5 grades now, with 10,000 square feet designated for future space. Steve Pernaw performed a traffic study and found the impact is no traffic backup. The emphasis of traffic study is Chichester Road, which will see 208 trips at peak AM and 136 trips at peak afternoon. The State of NH District 3 has confirmed that a traffic light will be bid out in 2024 and installed at Route 106 and Chichester Road in 2025. Mr. Rokeh is happy to answer any questions.

Chairman Seaworth stated he is glad that Loudon included Pembroke in the DRI. Selectmen's Rep Frederickson stated that Ricker Road paving is on schedule in the Roads Committee plan. Chairman Seaworth noted that for Pembroke Planning Board, commercial traffic on Ricker Road is of concern. Passenger vehicles have less impact. Seeing no further comments, Chairman Seaworth asked Planner Cronin to send a letter to the Town of Loudon summarizing board discussion tonight and wishing them good luck with the new charter school.

New Business

1. Range Road Policy Legal Update

Planner Cronin reported the Chairs and Vice Chairs of all town boards were invited to attend a consultation with legal counsel, Steven Whitley, held on April 26, 2023. Town staff, Board of Selectmen, and invited members from each board discussed risk and liability to the town by allowing property owners to build on a Class VI road. Does a signed waiver from the property owner cover the town? Will the waiver allow the homeowner to obtain property insurance for any incident or harm that occurs from lack of road maintenance? Questions and answers on the process to request permission to build on range roads were discussed. At the consultation, Selectmen's Rep Frederickson asked for a visual flow chart to post to the public summarizing the process. The proposed draft flow chart was reviewed by Steven Whitley, clarifications were made, and the Board of Selectmen will adopt the final flow chart at a future meeting and move forward with education on the range road policy and process.

Chairman Seaworth stated that he tried to focus on the impact to the Planning Board while reviewing the proposed flow chart. If a property owner is on a Class VI road, more than two hundred feet from a Class V road, he/she can request a building permit if they bring the road up to standard of a Class V road from the Class V intersection to the driveway of the lot. If built to proper standard, the owner may request that the town take over maintenance. The Planning Board is advisory in the range road building request process. The Planning Board keeps in harmony with the Board of Selectmen on subdivision applications. If there were to be a change to Class V roads in the subdivision regulations, the Planning Board would propose and vote on a change. Fire Safety standards prescribe width of road, height clearance and grade needed for emergency vehicles to respond to a property. Vice Chairman Bourque stated that there is no case law for the waiver of fire safety services by an individual application for building permit on a Class VI road. This is new ground if a lawsuit arises. Selectmen's Rep Frederickson stated there are overlapping laws that protect the town. Vice Chairman Bourque stated there is no case law currently on the books. Chairman Seaworth stated that while this situation is new to us, it is not a new law. Conditions for Building permits on Class VI roads have been worked out by other towns in New Hampshire in numerous ways. Vice Chairman Bourque asked for clarification on the process where a denial by ZBA goes to Superior Court. Would it go to the Housing Appeal Board? Chairman Seaworth stated that if someone appealed a Special Use Permit decision without an application, the applicant could decide whether to appeal to Superior Court or Housing Appeal Board at that time. Vice Chairman Bourque understands that the Housing Appeal Board only oversees cases that deal with land. Member Cruson asked if an applicant comes before the Planning Board, how does the Planning Board respond?

Chairman Seaworth stated that we have done this process twice. The review request comes from the Board of Selectmen as a Planning Board agenda item. Comments are provided by the Planning Board from a planning perspective. Planner Cronin puts the comments in writing back to the Board of Selectmen. Vice Chairman Bourque would like to see a checklist for analyzing a request, with specific things to look at. Chairman Seaworth stated Planner Cronin can provide any information she has on the request to build on a Class VI road. The Planning Board is not making the decision. The Planning

Board looks to the Master Plan, and the factors that would be considered if the request were a subdivision application on Class V frontage.

Selectmen's Rep Frederickson stated minimum information is needed to apply for a building permit. The Board of Selectmen would have preferred to see a plan but did not have one the last two times a request to build on a Class VI road came to the Board of Selectmen. Chairman Seaworth asked what a property owner needs to provide the Code Enforcement to request a building permit? Vice Chairman Bourque stated at a minimum, one must provide a sketch of the proposed building or garage location, size, and setbacks. Chairman Seaworth stated the request goes back to Code Enforcement after a Board of Selectmen decision is made. A plan should be provided to the Code Enforcement Officer at the beginning of the request to build on a Class VI road with a sketch of the building and water/sewer location. Items that need to be fixed, or are lacking, should be summarized in writing and accompany the request to build a house, with occupants, on a Class VI road. The applicant appeals Administrative Decision of Code Enforcement to ZBA. A 'lot of record' has some vested rights with documentation that a deed dates to pre-zoning, or is a lot created prior to zoning entitled to grandfathered rights. NH State statute comes into play. Applicants must meet building permit criteria and provide information on the proposed driveway. Then the Board of Selectmen solicits comments from the Planning Board and emergency services. Chairman Seaworth noted that at Roads, applicant provides a plan. The proposed development may be on a state road, and we would have no comments. Vice Chairman Bourque stated the point is that some documentation must be provided with the request to the ZBA and other boards. Chairman Seaworth noted the Planning Board normally functions as a permitting board.

Chairman Seaworth noted that state law has the applicant go to the Board of Selectmen. Selectmen's Rep Frederickson stated a different future board could make any decision. We currently follow the range road policy and must get a waiver signed by the property owner. We must talk to the Planning Board and emergency services. We go back to the building inspector, DPW and fire code for their input. If a proposed driveway is more than two hundred feet from the Class V road intersection, the criteria is more restrictive. We applied the range road policy in October 2022 and were asked to wait to implement it until January 2023. The application under consideration predated the range road policy.

Member Foss asked does the Board of Selectmen adopt the flow chart. Planner Cronin responded yes, and asked if anything on the draft flow chart is unclear. Vice Chairman Bourque recommended that a copy of the proposed flow chart and the approved range road policy be provided to the ZBA for their comment and review.

Selectmen's Rep Frederickson noted that the Board of Selectmen would benefit by knowing if other plans involving the same lot are in the queue. The impact of approving a request to build on a Class VI road are that the adjacent owner, or the owner of the lot across from the first person, applies to build. Chairman Seaworth stated that once the proposed driveway is beyond two hundred feet from the Class V intersection, the road must be built to standard for driveway. If a new road is of Class V standards, the town may agree to take over maintenance. Class VI road is unmaintained by the municipality. Class V roads are maintained by the municipality. A range road is unmaintained by the

municipality. Vice Chairman Bourque stated that if beyond two hundred feet is paved, the person owning the land across the street benefits from road improvements. I suggest the town encourages agreements with neighbors to maintain the road. Member Cruson stated that 3rd Range Road residents share the cost of maintenance. Member Foss inquired if the town could ask for a maintenance agreement in writing. Vice Chairman Bourque suggested getting the person across the street involved at the time of the agreement. Chairman Seaworth said that to have DPW go out and view the road would incur no financial cost. How can people get insurance for a house with a waiver of town services? Lenders may require a written maintenance plan. Planner Cronin stated this was a good conversation to have, even though it lasted longer than I expected.

2. Discussion Items for Future Zoning

a. Housing

- i. Tiny Homes
- ii. Accessory Dwelling Units
- iii. Residential Standards in Mixed Use Developments

Planner Cronin researched regulations in New Hampshire regarding tiny homes. Currently there is no State legislation relative to tiny homes for planning/zoning. Construction is regulated by Appendix Q of the 2018 Residential Building Code, which requires: 400 SF or less (anything larger is considered a manufactured home subject to different regulations), must have a permanent foundation (cannot be on wheels), must have plumbing and electrical hookups, must meet specific standards for clearance and life safety. I have not come across any municipal ordinances relative to tiny homes in NH. We would need to amend Zoning to add a new ordinance similar to the existing Manufactured Housing Park ordinance. Ordinance would need to require lot size, frontage, setbacks, provisions for water and sewerage, open space, co-op/association documents, site plan approval, etc. for tiny home communities. Otherwise will be treated the same as a single-family home. There are concerns about taxing and assessing units.

For consideration, if the Board is open to Tiny Homes for the purpose of increasing Pembroke's affordable housing stock, why not, as a first step, consider permitting detached Accessory Dwelling Units (ADUs). This would be a relatively simple and effective change to the Zoning. The 2023 NH Statewide Housing Needs Assessments recommends towns "increase opportunity for detached accessory dwelling units, including the removal of permitting barriers" as a way to increase housing stock. Symbiotically, tiny homes could be an option to use as detached ADUs.

<i>Tiny Homes</i>	<i>vs.</i>	<i>Detached ADUs</i>
<i>Very little demand in Pembroke (<5 calls per year)</i>		<i>High demand in Pembroke (Monthly inquiries)</i>
<i>Requires undeveloped buildable land</i>		<i>Reuse of existing structures (barns, garages, etc.)</i>
<i>Need to determine what zones to allow in</i>		<i>Allowed wherever single-family homes allowed</i>
<i>Requires drafting and adoption of new provision</i>		<i>Requires minor changes to existing ADU provisions</i>
<i>May be controversial pitch to voters</i>		<i>Minor change to Zoning that would not change character of the town</i>

A recent inquiry on the NH Planners email chain had towns with detached ADUs share their ordinances. Those that replied with their requirements for detached ADUs were Lyme, Merrimack, and Harrisville.

Planner Cronin noted that the ZBA grants Special Exception for attached ADUs. State statutes allow detached ADUs. Under current zoning, multiple variances may be needed for a detached ADU in Pembroke. Planner Cronin reported that the OSI, State Planning Office annual survey shows that 106 NH municipalities currently allow detached ADUs by right or by Special Exception. Some require owner occupancy of one unit. Chairman Seaworth stated his concern is what happens when a property with an ADU is sold, or the ADU is torn down. Can the town enforce the owner occupancy requirement? Member Foss suggested an annual form with a small fee could be filed with the Town Clerk from a property owner who is subletting on his property. Planner Cronin stated enforcement would be a zoning non compliance letter from Code Enforcement, and appeal to court. Vice Chairman Bourque noted that a common zoning condition of approval is that "one unit shall be occupied by property owner." Changes to ADU Section 143-18.1 may be needed. Planner Cronin stated that state law prohibits condominium form of ownership between a main house and ADU or subdividing a main house and ADU. Chairman Seaworth noted that the Town of Pembroke ADU zoning regulations predate the State of NH ADU statute.

Selectmen's Rep Frederickson stated that other towns regulate the size and distance of detached ADUs from the main house. Vice Chairmen Bourque stated that ZBA has considered four requests for detached ADUs. Two requests were approved, and two requests were denied. The two requests approved were detached ADU thirty feet from the main house. The two requests denied were over 1,000 feet from the main house. Town ordinance is silent on detached ADU, so the ZBA based its decisions on reasonable distance from the main house. Only one meter hookup is allowed to the main house. Chairman Seaworth stated that the Planning Board should make the ADU zoning

ordinance clearer. Vice Chairmen Bourque stated that surrounding towns (Concord, Bow, Chichester) allow ADUs by permit and conditional approval. ADUs are allowed by right under State statute, so why does an applicant need to go to ZBA?

Planner Cronin stated that if ADUs were permitted by right, the building department would follow criteria and design standards, such as having a shared driveway and location a reasonable distance from the main house. Vice Chairman Bourque stated it is important to get the ZBA members in to discuss reasonable design standard for a detached ADU. A joint meeting should be scheduled for this topic. Chairman Seaworth stated there has been a shift to allow detached ADUs but adjusting ADU zoning does not solve lack of affordable housing. If four to six units are allowed on one lot, would six tiny houses be allowed on one lot? Member Cruson stated older residents might want to place a tiny house on their lot to save costs. Multiple units need adequate water and sewer. Chairman Seaworth stated that regulations exist for manufactured housing on a single family lot. Planner Cronin spoke of a recent request for a four hundred square foot tiny house on a lot for the owner's mother. Zoning regulations allow up to 750 square foot ADU, and do not preclude a smaller ADU. Member Hanson is concerned about water and sewer for multiple units on one lot. In Dover, NH, forty-four cottages are proposed for employee housing. In the 1940s a similar situation was seen in the Sherwood area of Pembroke with units built but not winterized and had no plumbing. Planner Cronin asked if we could differentiate a tiny house from a single-family home in zoning, as we do for manufactured housing. Cottages are characterized as deconstructed multi family homes. The Dover cottages are built with a transfer of density credit, and have town water and sewer, a community room for common use and services like ride sharing. A small unit development is a cooperative effort with a builder. Chairman Seaworth agreed that innovative land use considers the economics of building. Vice Chairman Bourque stated that there are kitted tiny houses available for purchase. Member Cruson asked what incentive is offered for tiny houses. Planner Cronin stated that up until two years ago, tiny houses did not meet building code and were not part of the discussion.

Planner Cronin will keep housing options (ADU, Tiny houses, Mixed Use Development) on the list with zoning changes deferred last year so that the topic can be revisited at future work sessions.

b. Zoning Audit Recommendations – Deferred to future work session.

Minutes

April 11, 2023

MOTION: Vice Chairman Bourque moved to approve the April 11, 2023 minutes as presented. Member Hanson seconded.

VOTE: B. Seaworth – Y R. Frederickson- Y K. Foss - Y
 B. Edmonds - Y B. Bourque - Y K. Cruson - Y
 C. Hanson - Y

MOTION TO APPROVE APRIL 11, 2023 MINUTES AS PRESENTED PASSED ON A 7-0 VOTE.

Miscellaneous

1. Correspondence

- A.** DRI – Benjamin Franklin Charter School, Loudon. Parent/Board of Director met with the Planning Board at the beginning of the meeting.

2. Committee Reports –

Roads Committee – Chairman Seaworth reported that Roads Committee met last week. The recent rainy week did not cause any road washouts in Pembroke. Credit should be given to the Department of Public Works for their ongoing work managing maintenance. A brochure enclosed with tax bills advised property owners to contact DPW if they notice any culvert that needs to be shoveled. Liberty Utilities has a contractor moving the main gas lines from the street to the sidewalk. Consolidated put new poles in place. Alternate Member Christiansen noted that there are new specs on wires, as Consolidated sold all their poles to Eversource.

Board of Selectmen – Selectmen's Rep Frederickson reported that the Board of Selectmen met recently. The agenda included a presentation from Comcast. The Energy Commission will meet tomorrow night (May 10, 2023 at 5:15 p.m.) to consider whether it will be an opt in or opt out plan. The new owners of Oddball Brewing requested permission for seasonal outdoor seating. Access in the area will be reviewed. Tax bills were sent out and are due July 6, 2023. Paulette Malo was appointed Sewer Commissioner.

Technical Review Committee (TRC) – Vice Chairman Bourque stated that TRC met this morning. Jennifer Stevenson, 3 Glass Street, submitted a plan to renovate the former American Legion building into three shops and a café. There will also be forty storage facilities available downstairs. This plan is on the May 23, 2023 Planning Board agenda.

3. Other Business

- A.** Comprehensive Economic Development Strategy, Southern and Central NH – Planner Cronin reported that the Regional Planning Commissions of Central and Southern NH are updating their joint strategy plan to add more projects. Regions or individual towns with projects on this list show that regional support is in place for these projects. This makes them eligible for federal funding that may become available. Planner Cronin noted that Pembroke does not have any projects on the list currently. Partnering with City of Concord for expansion of sewer interconnection from Manchester Street is a good fit for this plan. The estimated \$15 million dollar plan will add more sewer capacity for development anywhere in Pembroke. The added capacity will free up capacity sent to Allentown and add a considerable capacity percentage overall to the Town of Pembroke. Vice Chairman Bourque agrees that this plan would decrease reliance on Allentown for sewer capacity. Alternate Christiansen asked if Regional Planning accepts every project proposed for their joint strategy plan. Planner Cronin stated that all submitted plans are considered, but not all may be added to the plan. This is a major issue in Pembroke. Planner Cronin stated

that for example, the proposed café on Glass Street would need nine hundred gallons sewer capacity. The entire building only has six hundred gallons of existing sewer capacity. Vice Chairman Bourque noted that the former Bank of NH building was sold again two weeks ago. The prior sale agreement contained language that did not allow use of the building as a bank for five years. The new owner is unknown currently.

4. Planner Items - none
5. Board Member Items - none
6. Audience Items - none

MOTION: Vice Chairman Bourque moved to adjourn the meeting. Seconded by Member Hanson. Without objection the meeting was adjourned at 9:00 p.m.

Respectfully submitted, Susan Gifford, Recording Secretary