

TOWN OF NEWPORT, NH
Minutes of the Planning Board Meeting
July 13, 2021 – 6:00 P.M.
Board of Selectmen's Room
15 Sunapee Street
Regular Meeting and Public Hearing

MEMBERS PRESENT: Ken Merrow, Vice Chairman; Ray Kibbey, Sean Glasscock, Bert Spaulding, Sr. alternate; David Kibbey, alternate; Herbert Tellor, Jr., BOS Representative

MEMBER ABSENT: Tobin Menard, John Hooper, II, BOS Representative Alternate

VIDEOGRAPHER: NCTV

STAFF PRESENT: Christina Donovan, Planning and Zoning Administrator

COMMUNITY MEMBERS PRESENT: David Burnham, Jim Mullane, Clare Gardner, Charen and Bob Urban, Chloe Urban, Tom Dombroski

CALL TO ORDER: Vice Chairman Merrow called the meeting to order at 6:06 p.m. followed by a roll call of sitting members.

PUBLIC HEARING: 2022 Shed Ordinance

Vice Chairman Merrow stated he would like to wait for Ms. Donovan, Zoning Administrator before he began the public hearing. Vice Chairman Merrow addressed the public in the room and asked if any were in attendance for the public hearing. There were none. Vice Chairman Merrow read the Public Notice into the record:

PUBLIC NOTICE
Town of Newport, New Hampshire

Notice is hereby given that the Newport Planning Board will hold a meeting on **July 13, 2021 at 6:00 p.m.** in the Selectmen's Room at 15 Sunapee Street, Newport, NH at which time a public hearing will be held on the following proposed zoning ordinance amendment.

Proposed Shed Zoning Ordinance - May 2022

Article IV – General Provisions

Section 421 – Sheds (200 square feet or less)

A Shed can have a 5-foot setback from side and rear property lines. Required front yard setback for specific zone still applies. No shed can be greater than 20 feet in high, measured from ground to peak. This applies to only one shed per parcel. All other sheds or accessory building must comply with setbacks required for their specific zone.

Vice Chairman Merrow asked if there was anyone in the public who would like to speak on the shed ordinance as presented. He acknowledged Mr. David Burnham.

Mr. Burnham made a request to change the Public Notice as posted. 20 feet in high...should read ...20 feet in height or 20 feet high. In discussion with the Board, the members decided to change the wording to 20 feet in height.

On a motion by **Mr. Spaulding, Sr., seconded by Mr. David Kibbey**; *the Board voted to change the wording to 20 feet in "height". The motion passed 6-0-0.*

There was no further public comment. Vice Chairman Merrow opened the hearing to the Board.

Mr. David Kibbey explained difficulties in compliance that a shed 100'x 100' and 5 feet from the property line at a (Country Club) motor home lot would create.

Vice Chairman Merrow explained to Mr. David Kibbey the history of amending the ordinance. He addressed Mr. Kibbey's concerns with mobile homes, citing 501.1(A) of the zoning ordinance.

Vice Chairman Merrow asked for clarification if there would be a second Public Hearing. Ms. Donovan said that she did not feel a second was necessary unless changes were made. When told there had been, she clarified that a second hearing would be necessary.

The Board members and Ms. Donovan discussed the compliance of the ordinance in mobile home parks and their lots. Mr. Ray Kibbey informed Ms. Donovan that there were several hundred lots in Newport that the ordinance would affect. Mr. Tellor stated that the mobile home parks already have language in the ordinance that would govern their usage of sheds. Ms. Donovan stated that the amended ordinance would then affect others in Town to create more leniency.

Mr. Glasscock stated that it (sheds in mobile homes) is already in the ordinance; if there is not a basement, the (mobile home) renter will be provided with a shed for storage. Mr. Ray Kibbey stated there were several reasons this might not be done, elevation changes on the lot being one. Mr. David Kibbey stated that when they put in septic systems years ago, the regulations for distancing was greater than at this time.

Mr. Glasscock stated for clarification that currently, with the more restrictive zoning none of the sheds in a mobile home park were in compliance of the ordinance. Mr. David Kibbey said that they had a legal opinion to the contrary he would have to find.

Vice Chairman Merrow addressed Ms. Donovan and stated there were two provisions; one they were working on for her use in the general public. The other dealt with mobile home parks under Special Provisions. It is a special exception to the Shed Ordinance. If the shed had to be moved to 3 feet from the property line, then it could.

Mr. Spaulding, Sr. asked Ms. Donovan if they could add provisions in the ordinance, a notation to direct people to the special provisions for the mobile home parks. Ms. Donovan stated she would add anything the Board as a whole asked her to. She would then bring it to legal counsel for correctness. Mr. Spaulding, Sr. asked the Board members if they approved of the notation.

Vice Chairman Merrow stated that the Board could potentially add: subject to "Article 5 Special Provisions in Section 501.1A. Manufactured Homes".

In discussion, Vice Chairman Merrow requested that the Board ask legal counsel about the addition. If they say the ordinance is fine as written, the Board will not add it. Mr. Spaulding, Sr. continued with his request and gave scenarios advocating for it.

Mr. Glasscock addressed Ms. Donovan and stated that the zoning ordinance did not mention leniency. It stated that if a mobile home does not have a basement the owner had to provide a storage building of 100 square feet. When asked about the ordinance, Mr. Glasscock stated the owner would have to reconfigure his lot or get a variance unless there is a provision in the mobile home zoning that has different setbacks. He repeated; the wording does not give additional leeway.

Vice Chairman Merrow addressed Ms. Donovan and again stated that she needed to get guidance from legal concerning the wording. The Board will continue the Public Hearing to a second meeting.

Addressing the Board members, Vice Chairman Merrow asked if there was additional discussion on setbacks. There was none.

Mr. Spaulding, Sr. asked why the height of 20 feet. It was explained to him. Mr. Spaulding, Sr. objected to the height and explained. Mr. Glasscock addressed Mr. Burnham and stated, for clarification, that the Board had discussed the height of the shed and had capped it at 20 feet. Mr. Burnham agreed. Mr. Spaulding, Sr. asked that the cap not be so high; 20 feet is enough for two floors. Mr. Spaulding, Sr. and Mr. Burnham discussed the sizes and heights of sheds. Mr. Spaulding, Sr. expressed his opinion on large sheds on small lots. Mr. David Kibbey said he believed it should be 12 feet in height. After some discussion, Vice Chairman Merrow asked if there was a motion to change the height. Mr. Glasscock said the Building Code said single story in height. He suggested adding that.

Mr. Spaulding, Sr. made a motion *to change the height of the shed from 20 feet to 12 feet*. Mr. Glasscock said it seemed overly restrictive. Mr. Glasscock said he did not believe the Planning Board should restrict individual's designs. **Mr. David Kibbey** seconded the motion. He was going to make an amendment to make it a single story. Mr. Tellor stated that in the definition of a shed it does not have a permanent foundation. The Board discussed the use of blocks, bare ground, etc. to be under the shed. Mr. Glasscock repeated that 20 feet in height seemed very reasonable. There was a discussion on a single story. **Mr. Spaulding, Sr. withdrew the second and withdrew his motion.** He said that he believed 14 feet was high enough. **Mr. Spaulding, Sr.** made a motion *to change the wording to 14 feet maximum height to peak of roof and single story*. It was seconded by **Mr. David Kibbey**. *The motion passed 4-2-0 (Glasscock and Ray Kibbey voted no).*

In discussion, Ms. Donovan addressed Vice Chairman Merrow and stated she wanted to clarify something. Foundation has no definition in a structure or shed. She read aloud, "a fixed location on land with a roof that contains humans, animals or items for storage." It could be (made of) paper. She informed the Board members that foundations are never considered part of a building or structure. Mr. Glasscock agreed, saying that foundations could be made of many different things.

Vice Chairman Merrow said that the motion was 14 feet maximum height and single story. Mr. Glasscock stated for clarification that anything over 14 feet would need a variance. He was told he was correct. Ms. Donovan had looked up the height of a single story.

Mr. David Kibbey said that he read the proposed shed ordinance as anything up to 200 square feet. Over 200 square feet would not be covered in what was done (with the changes in the ordinance). Ms. Donovan agreed. If it is larger, the individual will be held to a higher setback standard. Mr. Ray Kibbey said they could change the wording to "a single floor" instead of single story. Mr. Spaulding, Sr. gave a scenario in which the proposed wording could be circumvented.

Vice Chairman Merrow returned to the public for participation. Mr. Burnham informed the Board of current house and shed heights using sides and the pitch of the roof to explain what current standards are. Mr. Spaulding, Sr. negated Mr. Burnham's information and gave his opinion of the size of a shed. Vice Chairman Merrow asked if there was further public participation.

Ms. Donovan asked if the Board would be adding the notation to reference Section 501.1(A) in the rewriting of the proposed ordinance. If so, she would then go to legal and ask for an opinion. Vice Chairman Merrow said that he would make that motion. Mr. Spaulding, Sr. said there was a motion on the floor.

Vice Chairman Merrow said that he would make the motion *in a separate paragraph, "subject to Article 5 Special Provisions"*. He explained that mobile home parks were included in Article 5. **Mr. Spaulding, Sr.** seconded the motion. *The motion passed 6-0-0.*

The Board will hold a second public hearing during the August 10, 2021 Planning Board meeting at 6:00 p.m. in the BOS Room with the requested changes from the Board.

Vice Chairman Merrow closed the public hearing at 6:45 p.m.

The rewording of the Public Notice will be:

PUBLIC NOTICE
Town of Newport, New Hampshire

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Proposed Shed Zoning Ordinance - May 2022

Article IV – General Provisions

Section 421 – Sheds (200 square feet or less)

A Shed can have a 5-foot setback from side and rear property lines. Required front yard setback for specific zone still applies. No shed can be greater than **14 feet maximum in height**, measured from ground **to peak of roof and a single story**. This applies to only one shed per parcel. All other sheds or accessory building must comply with setbacks required for their specific zone **subject to Article 5 Special Provisions**.

NEW BUSINESS:

Mr. Spaulding, Sr. stepped down for case 2021-SPFP-005.

2021-SPFP-005: James Mullane Kelly Village, LLC: request final review of a site plan for the property identified as Map 235 Lot 032. Proposal for retail automotive dealer. The property is located at 14 Barton Whitney Road, in the Kellyville (K) Zoning District.

Vice Chairman Merrow opened Case 2021-SPFP-005. He stated for the record that Mr. Spaulding, Sr. was stepping down from the case. He asked for a motion to accept the application as complete. On a motion by **Mr. David Kibbey**, seconded by Mr. Tellor; ***the Board voted to accept the application as complete. The motion passed 5-0-0.***

Mr. Jim Mullane addressed the Board. Mr. Mullane explained he was planning on selling vehicles on the lot. It provided high visibility for potential customers. He had made significant improvements to the lot. Board members addressed Ms. Donovan and stated that they could not read the map provided in their packets. Mr. Mullane explained he would be going to the ZBA on Thursday, July 15, 2021. He had not realized the 2014 variance had expired. He explained the site and his proposed use using a penciled sketch of the lot. The following items were discussed:

1. Traffic. All traffic will enter and exit off of Barton Whitney Road.
2. Lighting. All lighting is required to be downcast with a sharp cutoff (there is to be no light pollution off the property).
3. Signage: size and location allowed will be per the building code.
4. Limit of vehicles on lot. Mr. Glasscock asked if there was a plan for the parking lot (holding vehicles). He was told there would be a maximum of thirty cars.
5. Use of house. Mr. Mullane said the house would be used as an office.
6. Vice Chairman Merrow asked what the Kelleyville (K) District setback was. He was told 50' measured from the property line.
7. Surveyed property to ensure he was not within the setbacks? Mr. Mullane said that when he moved the building he made sure they were not in the setback.
8. No notation of wetlands on property. Concerns of runoff from cars to wetlands. Ms. Donovan said he was not infringing on the wetlands. Mr. Mullane said he had the state come in concerning the wetlands. Mr. Dombroski agreed.

9. There was no earth movement in the wetlands.
10. Ms. Donovan clarified that the automobile sales were under state regulations.
11. State regulated standards for base material? Gravel? He was told yes.
12. Setback distance from lot line to parking lot? Ms. Donovan said they do not have setbacks.

Vice Chairman Merrow opened the hearing to the public. Mr. Spaulding, Sr. addressed Mr. Mullane and asked if he had removed the two story red building in anticipation of this project. He was told yes. Mr. Spaulding, Sr. questioned Ms. Donovan about this action. He then spoke on the Kelleyville District and the owners of businesses in the area.

On a motion by Mr. Ray Kibbey, seconded by **Mr. David Kibbey**; *the Board voted to accept Case #2021-SPFP-005 subject to downcast and sharp cutoff lighting. The motion passed 5-0-0.*

Mr. Spaulding, Sr. resumed his seat on the Board.

Mr. Spaulding, Sr. requested that the agenda items be taken out of order. On a motion by **Mr. Spaulding, Sr.**, seconded by Mr. David Kibbey; *the Board voted to hear the cases out of order. The motion passed 6-0-0.*

2021-Annex-002: Chloe Urban/Tom Dombroski (agent): Request a final review for an annexation of .123 acres from Map 117 Lot 012 to Map 114 Lot 087 in the residential (R1) Zoning District.

On a motion by **Mr. Spaulding, Sr.**, seconded by Mr. Tellor; *the Board voted to accept the application as complete. The motion passed 6-0-0.*

Mr. Dombroski addressed the Board and using a site plan explained the lot line changes made to create two buildable lots on Laurel Street. He identified the setbacks, water lines and sewer lines. After a brief discussion on the adjustments between Mr. Dombroski and the Board members, Vice Chairman Merrow opened the hearing to the public.

Mrs. Charen Urban, the applicant's mother, addressed the Board and said it had been an educational experience. Ms. Chloe Urban owned both lots and they wanted to make two buildable lots on Laurel Street. It is good for them and the Town. She thanked Ms. Donovan and Mr. Dombroski for their assistance.

Mr. Tellor asked if the wording should be changed to Lot line Adjustment. He was told it was not implemented yet. It would be on the August 10, 2021 Planning Board agenda.

Vice Chairman Merrow called for a motion. **On a motion by Mr. Spaulding, Sr., seconded by Mr. David Kibbey; the Board accepted Case 2021-Annex-002 as presented. The motion passed 6-0-0.**

Mr. Glasscock congratulated the applicant.

The Board was given a Mylar to sign. **All Board members signed** the Mylar; it will be recorded with the Sullivan County Registry of Deeds.

2021-SDFP-002: Susan Leavitt: Request a final review for a minor subdivision property identified as Map 116 Lot 029 located at 16 Fourth Street in the Rural (R) Zoning District.

Ms. Donovan addressed the Board and asked that Case 2021-SDFP-002 be removed from the agenda. The applicant did not need Planning Board approval because she will not be subdividing, she will be doing voluntary mergers.

Mr. Spaulding, Sr. stated it was an interesting case and it should be discussed in the abstract. There was discussion concerning discussing it at all, the members would be prejudicing themselves if in the future the applicant had to come before the Planning Board. Ms. Donovan asked to have the Case removed, the applicant had requested it. In discussion, Ms. Donovan asked that the Board continue the case. Vice Chairman Merrow called for a motion to continue Case 2021-SDFP-002.

On a motion **by Mr. Spaulding, Sr.**, seconded by Mr. Tellor; *the Board voted to continue Case 2021-SDFP-002 to the August 10, 2021 meeting. The motion passed 6-0-0.*

Mr. Dombroski addressed the Board with a similar scenario as they were discussing.

Mr. Spaulding, Sr. was recognized by Vice Chairman Merrow. He gave a presentation concerning the issues involved in Case 2021-SDFP-002. The Board held a discussion on Section 674:39-aa. Community member David Burnham asked what legal said about Section 674:39-aa. **Mr. Spaulding, Sr.** made a motion that *the Board vote to direct Ms. Donovan to ask the Town attorney to clarify the rights as opposed to the regulations of Section 674:39-aa. It was seconded by Mr. David Kibbey.* Mr. David Kibbey said it was not a question for the Town attorney. It should go to the NH Municipal Association or Land Use; someone with expertise on the topic. *The motion passed 5-1-0 (Glasscock voted no).*

CONTINUED BUSINESS: none

MINUTES: June 8, 2021

The Board concurred to defer the minutes of the June 8, 2021 Planning Board meeting to August 10, 2021.

ADMINISTRATION:

New Alternate Board Member-Mr. Bert Spaulding, Sr.

General Residential (R2) Zone-Review Rear Setback

The Board concurred to defer the agenda item to the August 10, 2021 Planning Board meeting.

COMMUNICATIONS:

Board:

The following will be on the Agenda for the August 10, 2021 meeting.

- 1) Public Hearing Two-2022 Shed Ordinance
- 2) Reorganizing the Board (electing Vice Chair and Chair)
- 3) Case 2021-SDFP-002 (continued)
- 4) Minutes of the June 8, 2021 meeting
- 5) General Residential (R2) Zone-Review Rear Setback Alteration
- 6) Administration-Town Attorney's answer to questions on proposed zoning ordinance
- 7) Town Attorney (Land Use attorney) clarification of 674:39-aa
- 8) Public Participation-One Credit Union
- 9) Wording changed from Annex to Lot Line Adjustment

Mr. Spaulding, Sr. addressed Ms. Donovan and asked that all case materials be filled in completely, that all maps and official site plans be legible, that applicants follow correct protocol. Mr. Mullane had developed his property and then come before the Planning Board. The Board gave a brief explanation of the application checklist which addressed most of Mr. Spaulding, Sr. concerns.

Mr. Sean Glasscock addressed Vice Chairman Merrow and Ms. Donovan and asked for the protocol of contacting the Town attorney with questions from the Planning Board members. He asked what constituted the need of a legal opinion. He also questioned the funding it will require.

Public: (Participation shall pertain to topics within the purview of the Planning Board).
None.

With no more business in the public meeting, on a motion by Mr. David Kibbey, seconded by Mr. Glasscock; *the Board voted to adjourn at 8:26 p.m. The motion passed 6-0-0.*

Respectfully submitted,

Maura Stetson
Scribe

Approved: August XX, 2021

The next meeting of the Planning Board will be on August 10, 2021 at 6 pm in the Board of Selectmen's Room.