

TOWN OF NEWPORT, NH
Minutes of the Planning Board Meeting
November 9, 2021 – 6:00 P.M.
Board of Selectmen's Room
15 Sunapee Street
Regular Meeting and Public Hearing

MEMBERS PRESENT: David Burnham, Chairman; Ken Merrow, Vice Chairman; Herbert Tellor, Jr., BOS Representative; Tobin Menard

MEMBER ABSENT: Ray Kibbey, Sean Glasscock, Bert Spaulding, Sr. alternate; John Hooper II, BOS Representative Alternate; David Kibbey, alternate

VIDEOGRAPHER: NCTV

STAFF PRESENT: Christina Donovan, Planning and Zoning Administrator

COMMUNITY MEMBERS PRESENT: Becky and Robert Bates, Richard and Pamela Chebalier, Peter and Kelley Merritt, Ed Karr, Kevin and Patricia Kober, Charmaine Keller, Micah Harvey, Tom Dombroski, plan surveyor and septic designer

CALL TO ORDER: Chairman Burnham called the meeting to order at 6:01 p.m. followed by a roll call of sitting members.

AGENDA REVIEW: agenda accepted as presented.

CONTINUED BUSINESS:

2021-SPFP-006 –Wisdom in New Dimensions, Dana Olmsted (Owner):- Request final review to approved site plan for the property identified as Map 253 Lot 001. The proposal is to construct a recreational facility on the parcel. The property is located on Pike Hill in the Rural (R) Zoning District. **Request to Continue.** Mr. Tellor made a motion *to continue Case 2021-SPFP-006 Wisdom in New Dimensions (WIND) to the December 14, 2021 Planning Board meeting at 6 p.m. as requested by applicant.* It was seconded by Mr. Merrow. *The motion passed 4-0-0.*

NEW BUSINESS:

2021-SDFP-004-Chad and Glenn Joshpe: Request a final review for a major subdivision, property identified as Map 246 Lot 025 located on Pollards Mill Road in the ~~Rural (R)~~ Residential (R1) Zoning District.

Chairman Burnham opened Case #2021-SDFP-004. Mr. Thomas Dombroski was in attendance as agent for the applicants. Mr. Dombroski addressed the Board and using a posted site plan explained what the applicants proposed to do.

- 1 They will create three saleable building lots and keep 34 acres as their own land
 - Lot 1 is 2.35 acres. It fronts on Breakneck Hill Road. Type: field and woods.
 - Lot 2 is 3.3 acres. It fronts on Pollards Mill Road. Type: field and woods.
 - Lot 3 is 3 acres. It fronts on Pollards Mill Road. Type: field and woods.
- 2 Driveway permits have been applied for. One corner (lot line) measured to a pine tree. The tree will be the corner “pin”. The state and DES have reviewed it and passed it.
- 3 The lots have Town water; land is sand.

Chairman Burnham asked if the existing driveway on Lot 1 was an easement. He was told it was a deeded Right of Way.

Chairman Burnham opened questions to the public.

- ❖ Mr. Peter Merritt, abutter, stated there was a fence on Lot 2 that had been moved. Mr. Dombroski agreed and stated that the land the fence is on will be deeded to the current owners; the fence had been moved previously (it had been brought to Mr. Dombroski's attention and became apparent when the surveyor pins did not align).
- ❖ Mr. Merritt asked the intention of the lots. Mr. Dombroski said they would be sold.
- ❖ Ms. Charmaine Keller asked about the plans for the large (34 acres) piece of land. Mr. Dombroski did not know.
- ❖ Micah Harvey, abutter, pointed out an error in the posting and Administrative Review. The documents state Rural (R) Zone, it is Residential (R1). Ms. Donovan stated the typographical errors were hers; the error had been caught on the application.

Chairman Burnham opened questions to the Board.

Mr. Merrow asked if the land had been deeded. Mr. Dombroski stated no.

Mr. Tellor pointed out another typographical error on the Authorization as Agent page. Breadneck Road should be Breakneck Road.

On a motion by Mr. Merrow, seconded by Mr. Tellor; *the Board accepted the application for Case #2021-SDFP-004 as complete. The motion passed 4-0-0.*

On a motion by Mr. Merrow, seconded by Mr. Tellor; *the Board accepted Case #2021-SDFP-004 as presented. The motion passed 4-0-0.*

Ms. Donovan stated there was a request by the assessor; he wanted an internal document signed. The four sitting Board members signed the site plan at the meeting. They will sign the Mylar at a later date.

PUBLIC HEARING: 2022 Shed Ordinance: Discussion and alterations if needed/Use of Setback or Yard?

(For the entire discussion, go to (www.nctv-nh.org)

Chairman Burnham stated that the Planning Board would be reviewing and changing as needed the amended Shed Zoning Ordinance as changed at the October 12, 2021 meeting. He opened the Public Hearing to public comment.

PUBLIC NOTICE

Town of Newport, New Hampshire

Notice is hereby given that the Newport Planning Board will hold a meeting on **November 9, 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 **Shed Ordinance for all Zones - May 2022**

Article IV – General Provisions

Section 421 – Sheds (200 square feet or less)

A shed must be a minimum of 5 feet from side and rear property lines. Required front yard setback for specific zone still applies. No shed can be greater than 14 feet maximum 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 buildings must comply with all requirements for their specific zone subject to Article 5 Special Provisions.

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

For clarification, Mr. Karr stated there had not been additional hearings on the Shed Ordinance. He stated that in October the Board and public discussed the use of setback in the proposed ordinance; it was not in other (Newport) Zoning Regulations. He related the issues the Board and people had had with the terminology during the October public hearing. Currently the Town is using the word “yard”. The Board explained the verbiage used in the proposed ordinance to accommodate everyone.

Mr. Karr, Ms. Donovan and the Planning Board members held a lengthy discussion on the proposed ordinance and its wording. Among the items discussed were:

- “Yard” for “setback”.
- The Planning Board had changed the wording to “yard setback” to make terminology consistent throughout the zoning ordinance.

When asked about confusion for voters, Mr. Tellor stated it had been discussed at the October meeting that a notice will be posted explaining the proposed ordinance to voters at the May 2022 meeting. Mr. Karr concurred with Mr. Tellor.

Mrs. Becky Bates addressed Chairman Burnham and asked for the definition of a shed. Chairman Burnham stated a shed was 200 sq. ft. or less. Over 200 sq. ft. it becomes a building (garage, tiny house, ADU, etc.). Mr. Robert Bates asked if a shed had to be moveable. He was told yes. Mrs. Bates asked if the Board or public remembered if a shed was 100 sq. ft. or less that a building permit was not required. Mr. Merrow stated her question was a building code conversation. He explained that in most municipalities a structure less than 100 sq. ft. does not need a building permit. It doesn’t waive the fact you need a zoning permit (in Newport). Every town has its own rules. Chairman Burnham stated that Newport is a “Permissive” town. If you are not permitted to do something, you can’t do it. Mr. Karr asked as a scenario, if a person was putting up a new shed (no matter the size), a person has to go to the Town Office for a permit. He was told yes.

When asked, Chairman Burnham stated that to be classified a shed, the building (shed) needed to be moved every six months. If it is not, it is considered a permanent structure.

Ms. Keller asked if a shed is on skids (can be moveable) could it stay in one location. She was told it had to be moved every six months. Ms. Donovan confirmed that the shed needed a permit. When she asked for the size of the setbacks, Ms. Keller was told they were different in each zone.

Mr. Karr asked about enforcement of the ordinance. He was told the Board did not do enforcement. The Town Zoning staff did that. Ms. Donovan stated that she went and checked out compliance when there were complaints or a violation was noticed. Mr. Karr was given the year for grandfathered usage. The public was told that property owners with sheds which are not in compliance and still will not be in compliance after the May voting, can apply for a variance with the Newport Zoning Board of Adjustments (ZBA).

Mrs. Bates stated they were told they were in violation. Their sheds were permitted and have been up for fifteen years. She asked their recourse. After Ms. Donovan explained the steps the Town took to ensure a shed was not constructed in a setback, Mr. Merrow addressed Mr. and Mrs. Bates. Hearing that their two sheds were 10x10 sq. ft, he stated that after the Zoning Ordinance passed they could consolidate them to make one 200 sq. ft. shed and be in compliance.

Mrs. Bates asked why the Town is changing the Ordinance, what was the “driving force”? Violations noticed by officials in the Town (fire, building inspectors, Zoning Administrators) and strict adherence to the regulations were two reasons given. There was a discussion on shed violations, complaints and what the administrator would have to do. Ms. Keller asked if the property owner could apply for a variance for a noncompliant shed. She was told yes.

Mrs. Bates asked for the process to get a variance. Mr. Merrow explained the applicant would be asking for relief of the rule. The Bates argument to the Zoning Board of Adjustments could be: you were told (15 years ago) you were in compliance, you got permits and did not know you had an issue; could you get relief from the rule (be granted a variance).

Mr. Bates stated he believed there will be many (towns) people who are nervous; they know they are in violation. Mr. Merrow stated they can go and vote yes for the shed ordinance. That is why the Planning Board is rewriting the ordinance for town vote (to help those people).

In discussion, Mr. Merrow stated the Planning Board investigated other towns; this rewrite is more consistent with them. Mrs. Bates asked for clarification, that nothing (is official) until it is passed in May 2022. There was a general discussion on variances and the cost to apply for one. There being no further comments or questions by the Board or public, Chairman Burnham closed the public hearing.

Mr. Merrow made a motion *that the Planning Board accept as final the Shed Ordinance as discussed at the November 9, 2021 meeting as the final new proposal*. It was seconded by Mr. Menard. *The motion passed 4-0-0.*

Shed Ordinance for all Zones - May 2022

Article IV – General Provisions

Section 421 – Sheds (200 square feet or less)

A Shed must be a minimum of 5 feet from side and rear property lines. Required front yard setback for specific zone still applies. No shed can be greater than 14 feet maximum 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 buildings must comply with all requirements for their specific zone subject to Article 5 Special Provisions.

Ms. Donovan asked that the Board vote out of order to continue Case **2021-SPFP-006** (WIND). The Board members complied (see notation above).

(For the entire discussion and review of Planning Board Rules of Procedure, go to (www.nctv-nh.org)

Referencing the October 5, 2021 Planning Board minutes, Mr. Merrow asked Ms. Donovan asked if she had the documentation as requested by Mr. Ray Kibbey at the meeting (Page four, paragraph two from the bottom: “ he asked Ms. Donovan to research the standard the road has to be built to”). Ms. Donovan explained what she had. Mr. Tellor stated they needed to be careful about the standard they request; it is not to go into the Town’s jurisdiction for maintenance. Requirements for the case were: a maintenance agreement, Town liability waiver and road standard (traffic, use and load dependent). There was a discussion between the Board members and Ms. Donovan on the road standard requirements and court decisions on similar cases. Ms. Donovan would look into the cases and road standard requirements.

Review of Planning Board Rules of Procedure: Discussion in regards to motions/voting for alternates and their capacity. Ms. Donovan and Board members read off the member’s names on the Signature Page who amended the Planning Board Rules of Procedure in 2016: David Burnham, William Walsh, David Hoyt, Ken Merrow, Ray Kibbey, Bert Spaulding, Sr., and W. Howard Dunn. It was requested that the Board member names be typed under their signature lines on the next amended Rules of Procedure document.

There was a lengthy discussion on page one, Members and Alternative #5 and page two, Meetings #4.

Ms. Donovan stated that at the first public hearing of the Shed Ordinance, Mr. David Kibbey and Mr. Bert Spaulding, Sr. (alternates) had announced themselves in the roll call, but had not been appointed by the Chairman to sit for an absent member or empty chair. The reason she had asked to redo the motioning and voting in the entire meeting was to meet the Planning Board’s Rules of Procedure to the letter for the proposed Shed Ordinance with its significant changes. The Board members continued their lengthy discussion on the Rules of Procedure. Ms. Donovan joined in their conversation and discussion.

Mr. Tellor stated several times that the Planning Board had to follow the state RSAs and their guidelines. Mr. Lunn addressed the Planning Board and explained appointing is done by the BOS. Designating is done by the Planning Board (Chairman). He asked what the problems with the Rules of Procedure were. Mr. Merrow stated that months ago two alternates joined (sat on) the Planning Board. The Board heard cases, the alternates had made motions and voted but hadn't been designated. It was brought to the Boards attention by a member of the Planning Board. Mr. Lunn asked if there was precedent. He was told yes. Mr. Lunn suggested simplifying the language in the Rules of Procedure; the Board was overthinking.

Chairman Burnham stated the Rules of Procedure should be left alone.

Mr. Tellor requested the Board change activate and appointed (replace with designate). Also, remove #5 (on page one). There would be no specific manner in which the Chairman would designate an alternate.

Other changes to the rules were agreed upon by the Board.

Ms. Donovan will rewrite:

1. Replace activate and appoint (except page one, #4) throughout document with designate.
2. Move: page one, Members and Alternates #5 ... "During a public hearing, alternates may sit at the table with the regular members and may view documents, listen to testimony, and actively participate and interact with other Board members, the applicant, abutters and the public" to page three, under Public Hearings.
3. Move page one, Members and Alternates #5, #6, and #7 to page two under Meetings after #5.

Ms. Donovan will rewrite the Rules of Procedure with the changes and bring them to the Board on December 14, 2021 for acceptance or additional rewriting.

MINUTES: October 5, 2021; October 12, 2021

October 5, 2021

On a motion by Mr. Merrow, seconded by Mr. Tellor; ***the Board voted to approve the minutes of the October 5, 2021 Planning Board meeting with the following amendments:***

1. ***Correct Header on minutes, Page One (September should be October, Header should read: TOWN OF NEWPORT, NH/ Minutes of the Planning Board Meeting/ October 5, 2021 – 6:00 P.M./ Board of Selectmen's Room/ 15 Sunapee Street/ Special Meeting***
2. ***Page three third paragraph from the bottom, line one: "open the case"... should read, "open the discussion"...***

The motion passed 4-0-0.

October 12, 2021

On a motion by Mr. Tellor, seconded by Mr. Menard; ***the Board voted to approve the minutes of the October 12, 2021 Planning Board meeting as presented. The motion passed 4-0-0.***

ADMINISTRATION:

General Residential (R2) Zone-Review Rear Setback

Ms. Donovan stated that it has been requested that the Board agree to review the R2 Zoning District in regards to setbacks. Since then, there have been many problems noted in the 2019 Zoning Ordinances. People have said they were out of date or need updating. It has been requested that the entire book be reviewed and necessary changes made. The need for changes has come to the attention of the BOS. Ms. Donovan asked if the Board would be interested in holding extra meetings each month to review each ordinance/zoning district.

Flood Zone Ordinance-No New Construction

Ms. Donovan informed the Board that she and Mr. Tellor attended a Mitigation Committee Meeting. The committee wants to have a Flood Zone Ordinance in Newport. Newport does not have one; most towns do.

Master Plan Review and Update & CIP Review

The Planning Board has purview over the Master Plan and CIP. Ms. Donovan stated that currently the BOS was doing the CIP. If the Planning Board was okay with the BOS undertaking the CIP, then they don't have to do anything. If they wanted to control the CIP, then the Board members would have to start working on it. Mr. Tellor said that he believed the BOS was taking some responsibility off of the Planning Board because the Zoning Ordinances would be an extensive project. Ms. Donovan agreed with Mr. Tellor. Mr. Merrow gave a historical account of the last CIP that the Planning Board tried to do. For lack of information (by others) it "died on the vine". Ms. Donovan said that Finance Director Brown produces the CIP. Mr. Merrow stated if the Planning Board did the work and the BOS was going to change it, have the BOS do it. Chairman Burnham stated that the CIP was in the budgetary category. He explained the process and how it is noted in the CIP timeline. Chairman Burnham stated a lot of things can change over the years as to 'wants versus needs'. Mr. Tellor explained that equipment, building improvements and construction are placed so that the tax rate remains level, not fluctuate every year. Looking at the Master Plan was discussed before working on the CIP. Ms. Donovan asked that the Board set the Master Plan aside for now.

The Planning Board members review & Review all current Newport Ordinances (extra meetings?)

Ms. Donovan stated that there would be two cases at the December 14, 2021 meeting. She asked for the Board members input on having additional meetings in January 2022, February 2022 and March 2022. The Board members could work on the Zoning Book or the Master Plan. Mr. Merrow said he believed they should work on the Zoning Book: definitions of the zones, the synonym yard versus setback. Mr. Tellor stated there were several updates that needed to be done. Commenting, Ms. Donovan stated they might look at arbitrary definitions or regulations (such as 600 sq. ft. for a house). Addressing the Board again, Ms. Donovan asked if they would be interested in holding an extra meeting or tagging a work session onto a regular meeting.

Mr. Tellor stated they could plan on an extra meeting each month, but if the cases were short (time wise), they could have a work session at the end of a regular meeting. Continuing, he said that the Pike Hill Case would be heard in December. They should not have a work session at the December meeting. Ms. Donovan agreed. She then asked the Board members to review the Zoning Ordinances and make a list of items for the Planning Board to work on. Mr. Merrow addressed Ms. Donovan and stated that one thing the Planning Board had never done was put the definition of Permissive Zoning in the book. They needed to start with page one. The Board and Ms. Donovan had a lengthy discussion on the Zoning Book wording, definitions and meanings. Mr. Merrow requested that the Board be given other towns zoning ordinances to compare their wordings. Ms. Donovan agreed to get some.

Mr. Merrow directed Ms. Donovan, Zoning Administrator, to please research neighboring towns for yard/setback definitions within their Zoning Ordinances.

After a general discussion on rewriting the zoning ordinances, Ms. Donovan informed the Board that the Spring Street apartment units acquired the State money necessary for building. Ms. Donovan has been in contact with the contractors and reminded them of all the conditions they are obligated to do before and during construction including permitting, bidding, and traffic study. She will follow up with the Avanru Company representatives.

Mr. Merrow gave Ms. Donovan a document, "Quick Assessment Master Plan". They discussed who might have given it to him. Ms. Donovan will do:

- ❖ Zoning list (of things to do)
- ❖ Questions for legal
- ❖ Research neighboring towns zoning ordinances.

COMMUNICATIONS:

Board: none

Public: none

With no more business in the public meeting, on a motion by Mr. Merrow, seconded by Mr. Menard; ***the Board voted to adjourn at 8:39 p.m. The motion passed 6-0-0.***

Respectfully submitted,

Maura Stetson
Scribe

Approved: December XX, 2021

The next meeting of the Planning Board will be December 14, 2021 at 6 p.m. in the Board of Selectmen's Room.