

PLANNING BOARD

TOWN OF PETERBOROUGH, NH

Minutes of February 29, 2016

Members Present: Chair Ivy Vann, Alan Zeller, Joe Hanlon, Jerry Galus, Matt Waitkins, Ed Jeungst and Bob Holt

Staff Present: Peter Throop, Director, and Laura Norton, Administrative Assistant, Office of Community Development

Chair Vann called the Public Hearing to order at 6:30 p.m. noting there were several public hearings on the docket and while all the members of the audience were welcome to stay “if you came to hear about OSRD (Open Space Residential Development) we are not going to talk about that tonight.” She explained the Board just needs more time for that amendment.

Minutes:

A motion was made/seconded (Jeungst/Hanlon) to approve the Minutes of February 8, 2016 as written with all in favor.

A motion was made/seconded (Galus/Zeller) to approve the Minutes of February 17, 2016 as written will all in favor.

Proposed Zoning Amendments:

Citizen’s Petition:

Chair Vann began by noting the first public hearing was a Citizen’s Petition brought forth by John Kaufhold to change the zoning designation for Parcel No. R003-024-000 from General Residence to Business/Industrial. She asked the petitioner to present his case.

John Kaufhold introduced himself and thanked the Board for hearing his request. He began with an explanation of “how we got to this” adding “I hope you support this, it makes logical sense to go back to what it was intended to be.”

Mr. Kaufhold told the audience and members he was the owner of Peterborough Marble and Granite located on Concord Street. As a graphic of the lot was projected Mr. Kaufhold gave a brief history of the parcel that had been rezoned *from* Business/Industrial to General Residence in 2012. The parcel was formerly

owned by Mary Graves who had tried off and on to sell the property since the 1970s. He described the many constraints of the parcel (Rural Gateway Overlay District, Shoreline Conservation District, and Wetland Protection Overlay District). He told the members Mrs. Graves entered a nursing home last year and her daughter approached him about buying the lot. "We outgrew our present location 25 years ago" he said adding "and I have been looking for a site to store extra stone and equipment." He told the members "I don't have quite the wherewithal to buy something large like Belletete's or Agway but this site is good and it makes more sense to match it with the area. It is a good place to have the material needed on hand, is environmentally safe given its proximity to the river (no chemicals, industry or manufacturing)."

Mr. Kaufhold concluded by noting "this parcel meets my needs. I hope you see the same logic in it and support this petition, thank you."

Chair Vann opened the public hearing to the public. Laretta Laurenitis introduced herself. She noted that Mr. Kaufhold had quite an inventory of cars and asked "will you have storage for them as well?" Mr. Kaufhold replied "yes, maybe build a barn for them. That makes sense too as I currently rent space for their storage and being an old Yankee I don't like paying rent. I would like to have them in my own space under one roof."

Francie Von Mertens introduced herself and asked about buffers along the road, the Drury Road Bridge and the wetland areas.

Heather Peterson introduced herself and noted "I would just like to say this property has been in the works for so many different useful proposals. It's had a charrette and has been zoned and re-zoned. I think it is great someone finally has a use and a plan for the property. I am excited about the plan and I hope the Board supports it."

Deliberation:

Chair Vann appointed both alternate members to sit. She explained the process of a deliberative session and resulting vote as to whether or not the Board gives a formal recommendation of supporting/not supporting the petition.

As Chair Vann looked around the table she said "that is our role, I just wanted to make it clear." She went on to point out the parcel on the graphic showing the existing zoning as General Residence District and said "when I look at it with the rest of the area it looks a little spot-zoning distressing to me."

The members briefly discussed the permitted uses in the district (Office subject to parking, Professional Services, Industrial and Light Industrial Uses, Wholesale, Warehousing and Storage, R&D, Conference Facilities, Lodging Establishments *except* B&Bs, Retail and Restaurant if incidental to Principal Business, Motor Vehicle Sales, Recreational Facilities, Self-Storage Facilities, Public/Semi-Public Uses, Personal Services, Accessory Uses and Healthcare Facilities *except* for Assisted Living and Nursing Homes).

Chair Vann interjected “I would love to see nothing there but that is not the case.” Mr. Juengst noted “it makes sense, it was Business/Industrial once and this is a good use for it in the area it is in. It would not be different from anything adjacent to it.”

A motion was made/seconded (Galus/Juengst) to support the Citizen’s Petition to change the zoning designation for Parcel No. R003-024-000 from General Residence to Business/Industrial and move it to ballot with all in favor.

Chair Vann introduced the Board and Staff prior to the next public hearing. “I am sorry” she said “I usually do that at the beginning.”

Proposed Amendment to Section 245-6.3 Accessory Dwelling: To delete and replace an existing definition of Accessory Dwelling and to delete and replace an existing ordinance for Accessory Dwelling Units (ADUs):

Chair Vann gave a brief history of the statutory change being driven by SB 146. “This is an effort to bring our Accessory Dwelling Unit (ADU) ordinance up to date and in compliance with the proposed amendment to State Statute which is awaiting the Governor’s signature” she said. Chair Vann also briefly reviewed the key changes in the ordinance intended to create a greater variety of housing stock as well as income potential for home owners.

Mr. Throop walked through the changes of the ordinance as specified by the amendment. He pointed out changes to the definition of ADUs as well as the statutory requirements. He told the audience “ADUs are a secondary living unit created within or attached to a single-family dwelling (or) in a detached structure on the same lot as the single-family home. It is smaller than the principal dwelling and provides independent facilities that provide for sleeping, cooking, eating and sanitation on the same lot as the principal structure.”

Mr. Throop went on to say that ADUs would be allowed in all districts that permit single-family dwellings. “It would be permitted as a matter of right” he said adding “but there are requirements.” He reviewed the minimum area of ADUs is not less

than *less than* 400 square feet nor more than *the greater of* 750 square feet or 30% or the gross living area of the principal dwelling unit. “And no more than three bedrooms” interjected Chair Vann.

Mr. Throop reiterated the ADU may be attached or within a separate detached building (barn or garage). He told the audience that for ADUs located within the primary building, an interior door must be provided between the two dwellings “but there is no requirement that that door would need to remain unlocked.”

Mr. Throop continued to review other requirements that included adequate provisions for plumbing, heating, electricity and sanitary disposal “but they do not have to be separate systems as long as both occupants have access to the electrical panel and circuit breakers” he said.

Mr. Throop continued by noting both conversion or construction of ADUs must be in compliance with all sections of the building and fire codes, minimum parking requirements consisted of two (2) off-street spots for the principal unit and one (1) off-street spot for the accessory unit. He indicated that any additions or modifications to the exterior of a structure must be in the architectural style and detail consistent with the principal dwelling unit. He spoke briefly about the requirement that either the primary unit or the ADU had to be occupied by the owner of the property as their principal place of residence. He described a form (Memorandum of Adequate Notice) that would indicate the owner occupancy requirements that would need to be recorded at the Registry of Deeds prior to issuance of a Building Permit for the ADU. This notice alerts future buyers of the property of the owner occupancy requirement. He noted “an ADU may not be subdivided or sold separately from the principal dwelling unless the both parcels meet all the dimensional requirements for a single-family dwelling in the zoning district in which it is located. This includes lot coverage, frontages and setbacks.”

Mr. Throop concluded with a review of the application procedures for ADUs. This included completion of an application form to be submitted to the Code Enforcement Officer, verification of compliance by both the Code Enforcement Officer and the Fire Chief, potential referral of compliance review to the Minor Site Plan Review Committee and when complete, issuance of a Building Permit, inspections and finally a Certificate of Occupancy.

Hope Taylor introduced herself and citing the issue of affordable housing asked “who can live in one of these? Anyone?” Mr. Throop replied “yes, the purpose for the statutory change was specifically to allow for greater opportunities for affordable housing” with Chair Vann adding “and to increase the choices that are out there.”

Ms. Von Mertens asked “is this similar to the infill ordinance that failed?” Chair Vann noted that the in-fill ordinance had actually passed and a brief discussion about its intentions followed with Chair Vann noting in essence “that ordinance creates new lots for infill, here you use the existing lot and enabling the addition of a second smaller dwelling.” Ms. Von Mertens asked about the procedure if the Code Enforcement Officer was not comfortable with determining the compatibility of the proposed project with the external architecture standard. “He sends it to the Minor Site Plan Review Committee (MSPR)” replied Chair Vann. “Who is that?” asked Ms. Von Mertens. Mr. Throop noted the MSPR Committee consisted of the Code Enforcement Officer, the Fire and Police Chiefs, himself, the Public Works director and a Planning Board Representative. Chair Vann noted the amendment “has language that is quite clear. Towns can manage ADUs but they cannot deny them.”

Concerned about abutter and neighborhood notification Ms. Laurenitis had several questions about the statutory amendment specifying by *Right*, by *Conditional Use Permit* and by *Special Exception*. Mr. Throop replied “yes towns do have that right but they cannot deny the use.” Ms. Laurenitis also had questions about the minimum and (especially) the maximum size of the ADUs. When she asked about establishing conditions Mr. Throop interjected “Board’s would need to be careful when establishing conditions to ensure they are reasonable and based on the standards.”

Ms. Laurenitis then asked about the maximum number of three bedroom or 30% of the gross living area of the principal unit. She cited an example of a principal dwelling unit of 5000 square feet giving the ADU 1500 square feet. “Are you allowing that?” she asked. A brief discussion about the percentage formula, sharing of utilities, life safety and parking followed.

Jill Shaffer Hammond introduced herself and asked if anyone had done any research on the effect the amendment may have on property taxes. Mr. Throop replied “no, we did not discuss that.” Chair Vann interjected “probably not” and told the audience and members that when she inquired about removing her in-law apartment in the hopes of decreasing her property taxes she was told “if anything it would be minimal” adding “but that *is* an interesting question.”

Noting the regulations did not seem to define it Ms. Laurenitis asked about detached ADUs. Chair Vann pointed out the language in the amendment for her. She added the ADU must meet all criteria (size restriction of the ordinance) and setbacks “but could be a garage, a cottage, a barn or even a new structure.” Ms. Laurenitis asked “why is it defined that way?” reiterating “if you have a 10,000

square foot house you would be allowed a 3000 square foot building on the lot. That is a concern to me” she said.

Ms. Taylor asked if there would be any abutter notification with Chair Vann replying “not the way it is written.” A brief discussion about the lack of neighborhood input followed with Ms. Laurenitis noting “that is quite a step to take (to detach it).” Mr. Throop interjected “a detached ADU is permitted under the town’s existing ordinance” with Chair Vann adding “it is allowed now, this is not new and I am reluctant to take away what is in the ordinance now.” With some question remaining Chair Vann read the first sentence of 245-24.1 “**One** Accessory Dwelling Unit shall be allowed as a matter of right in all zoning districts that permit single-family dwellings and on any legally conforming parcel where only one single-family dwelling already exists.” When finished Chair Vann looked up and as she closed the public hearing said “our goal is not to create an apartment building.”

Deliberation:

Chair Vann began by noting “I know we have talked about the 30% of gross living area at length and I am comfortable with that.” Mr. Waitkins noted his concern about accommodating parking spaces for larger ADUs with Mr. Throop indicating that the ordinance standard for parking spaces is the minimum requirement.

A motion was made/seconded (Galus/Hanlon) to delete and replace the existing ordinance with the proposed amendment 245-24.1 Accessory Dwelling Unit to Ballot as written, with all in favor.

Propose to amend the use definition for Bed & Breakfast Establishment and allow the use by Conditional Use Permit in the Family, General Residence and Rural Districts; and propose to create a new use definition of Tourist Home Establishment and allow this use by right subject to specified conditions in the Family, General Residence and Rural Districts.

Mr. Throop briefly defined the difference between a Bed & Breakfast and a Tourist Home. “They are essentially the same except for their scale” he said noting “Tourist Homes may have one or two rooms to rent out.” He cited the visioning work they had done had identified the need for additional opportunities for different types of housing. He also noted anecdotal awareness that rooms in private homes are being rented out to transient guests today.

Chair Vann reviewed the provision of parking (2 off-street spaces for the residents of the dwelling and 1 off-street space for each room available to rent). Mr. Throop added that Tourist Homes are encouraged to obtain a voluntary life safety

inspection from the Fire Department for a nominal fee. He reiterated that a Tourist Home may provide only 1 or 2 guest rooms to rent. "Anything more than that it becomes a Bed and Breakfast use" he said adding "Its my understanding that the Little River B&B with their six rooms was required to install sprinklers and a fire alarm system." Chair Vann noted it was reasonable in that it is a bigger use and there is an expectation that with a more formal enterprise, those types of safety issues have been provided for.

A brief discussion about *rooms for rent* versus *rooming house* versus *acquiring roommates* as well as the definition of *transient* followed. Mr. Throop also mentioned incidental use of personal property noting "owner-occupied differentiates it."

Ms. Laurenitis asked "how would anyone know it is a Tourist Home if the abutters are not informed?" Mr. Juengst replied "how would you know if someone took in a roommate?" A brief discussion about enforcement followed with Mr. Throop noting "we just do not have the resources and often do not know they are out there unless or until there is a complaint."

Paula Fox introduced herself and her husband Rob as the owners of Little River Bed & Breakfast. She acknowledged the use was by right "but there is no process, no abutter notification or life safety inspections. You could have guests that are not familiar with what is standard in this area, you may have guests that do not speak English." Regarding travel and tourism and the Meals & Room tax Ms. Fox noted "for every *one* dollar spent you get *nine* dollars filtered back into the communities for marketing, tourism and education" adding "by not making these illegal operations legal you lose those dollars (Meals and Rooms tax) that comes back to the state."

Mr. Fox told the members he knew of one Airbnb that had a guest room on the third floor. "This is huge safety concern if life safety inspections are not required or codes are not enforced" he said. He went on to say "the concept is already out there, people are already doing it and you are writing something that will open the flood gates to operate these without regulation. The idea of creating a new label for them makes them difficult to identify and difficult to regulate. They are businesses without obligation and they are taking away from others." Ms. Laurenitis agreed and reiterated the life safety issues were important to consider. "This amendment only encourages homeowners to have a safety inspection done and that the Airbnb rentals take business away from established B&B and Country Inns in the region" she said. A brief discussion about paying the Meal and Rooms tax and assuring life safety precautions/inspections creates a lack of incentive to open a legal Airbnb followed.

Mr. Fox reiterated the importance of tourism in the region. "It is the 2nd largest industry in the state and a huge part of the Monadnock Region" he said adding "and that does not happen by accident. There are hardworking people who market the Monadnock Region, the Lakes Region, the Sea Coast and the White Mountains." Like his wife before him Mr. Fox noted the revenues for the state Meal & Rooms tax filter back to the region supporting education and local tourism. He concluded "and you can almost always find a room. The idea that we are packed to the gills and starving for additional space is not true."

Ms. Laurenitis suggested the Board look into how the City of Portsmouth handles their short term vacation rentals and B&Bs. "Maybe we could incorporate some of what they have" she said.

Eric Lorimer introduced himself and his wife Pam as the owners of the Jack Daniels Inn. He gave a brief review of the occupancy statistics of rentals over a year's time. "The average occupancy rate for New Hampshire is 60%. Hillsborough County had an occupancy rate of 76% in October" he said adding "and the only time you hear everything is full is the day before the Columbus Day Weekend and even then we will help you find a room." A brief discussion of a homeowner's right to rent a room in their house followed. Mr. Lorimer acknowledged that he thought that was reasonable "but there should be some process. Notification of your neighbors and the town is also reasonable" he said.

The Chamber of Commerce's Sean Ryan introduced himself and spoke briefly about disturbances involving Airbnbs. He reviewed statistics involving Airbnbs noting "Police and Fire calls have increased" he said adding "I have nothing against them but they need to be regulated, they can get out of hand." It was also noted that Airbnbs actually limit the amount of affordable housing in town. The example of a long term rental switching to an Airbnb could be rented out far less times a month for much more money. Ms. Fox pointed out the issue was not an easy one to get a handle on and that the state was working on the problem as well "but they have not determined which way to go." She advocated that this amendment may be premature and that incorporating it into the zoning regulations without any sort of check and balance system may be a mistake.

When asked if there had been any successful case law tied to Tourist Homes (Airbnbs) where the Tourist Home won Mr. Throop replied "I don't know, none that I am aware of." Mr. Fox interjected "there are pending suits across the country and they are spending billions of dollars fighting any kind of regulation (of any sort). This lobby wants no taxes and wants their members to remain unregulated."

Ms. Fox concluded “these establishment should be paying Meal and Rooms tax. They are operating illegally today.” Mr. Hanlon interjected “I have a different point of view” and noted while staying in a private home was not for him, he did see a benefit to them, “especially for young people that may not be able to afford to stay at a hotel.”

A motion was made/seconded (Holt/Juengst) to table the Tourist House amendment for 2016, pending supervisory legislation on 1 and 2 room establishments, with all in favor.

Chair Vann concluded “what is compelling is what the state is doing about meal and room taxes is not our business.”

Moving on to changes to the Bed & Breakfast ordinance Chair Vann noted “the amendment would allow them to operate in the Family, General Residence and Rural Districts, expanding the opportunity for lodging in town.” She went on to say “these are owner occupied where there are 3 to 6 double occupancy bedrooms available as overnight accommodations for paying, transient guests and to whom a morning meal may be served.” She reviewed the minimum parking requirements and noted Bed & Breakfast Establishments were not currently allowed in the Family or Rural District but there were some compelling guidelines from the Agricultural Business Enterprise Use on a Commercial Farm.

Ms. Fox noted her concern with the definition of 3 to 6 double-occupancy bedrooms. “It should really be 1 to 6 and that the maximum of 6 is very limiting.” She noted the Benjamin Prescott Inn in Jaffrey has 10 rooms, the Greenfield Inn has 9 rooms and the Inn at Crotched Mountain has 13 rooms. Chair Vann replied “I hear what you are saying and I believe the maximum of 6 rooms comes out of the Agriculture Ordinance.”

Ms. Fox told the Board “we did a lot of research before we picked Peterborough for our B&B” adding “and six (rooms) is almost the bare minimum to be viable.” She noted their Business Plan hoped to add at least two more rooms. A brief discussion about the six room limit and its association with Agricultural Business Enterprise use on a commercial farm followed.

Ms. Fox then pointed out that under the Standards for Bed & Breakfast Establishment “Number 6 states the establishment may serve a morning meal for guests and may provide a box lunch for guests to take with them.” She told the members “the state only allows us to do breakfast.” Chair Vann replied “that is between you and the state.” She noted her advocacy for long term walking trails and said “I would like the B&B to be able to send their guest out with lunch so

they don't have to visit the general store first. With a smile Ms. Fox replied "you could have the general store prepare boxed lunches for your guests, they pay the meals tax."

Ms. Laurenitis reiterated her concern about abutter notification, increased traffic and life safety issues. Chair Vann reiterated that the intention of the amendment is that the owner be on the property. Pam Lorimer introduced herself and clarified "but there may be multiple buildings on the lot." Nodding, Chair Vann replied "excellent point." Mr. Throop pointed out that an applied standard to all Bed & Breakfast establishments is that it be located in a single-family dwelling, which would also serve as the principal residence of the owner of the establishment.

"Alright" said Chair Vann "the primary issue we've heard is the number of bedrooms so should we go to 8?" Ms. Fox replied "probably" adding "actually between 6 and 10. Right now we generate less traffic than a family with two teenagers."

A brief discussion about site specificity and traffic followed with Chair Vann noting "traffic is almost always a red herring." When Mr. Hanlon suggested they increase the number of rooms to 10, Mr. Holt replied "I think we should go to 12" Mr. Throop briefly reiterated the Board's authority to include language that would evaluate the setting and limit the number of rooms based on specific criteria. "I want to make that clear" he said.

Mr. Waitkins went on record and noted "I would have said at least 10." Chair Vann looked around the table and asked "are we feeling like 12 rooms is okay if they meet all the criteria and requirements?" adding "the examples of the Benjamin Prescott Inn is a good one, that is clearly Rural." The members agreed to 12 rooms subject to criteria similar to what is found in the Agricultural Business Enterprise Ordinance, and to take out the minimum requirement of rooms.

In closing, a motion was made/seconded (Hanlon/Juengst) to schedule a second public hearing on the Bed & Breakfast amendment for March 21, 2016 at 6:30 p.m. with all in favor.

Next Meeting: Public Workshop March 14, 2016 at 6:30 p.m.

The meeting adjourned at 7:35 p.m.

Respectfully submitted,

Laura Norton, Administrative Assistant