

**PLANNING BOARD  
TOWN OF PETERBOROUGH, New Hampshire**

**Minutes of February 13, 2012**

**Members Present:** Vice Chairman Rick Monahon, Rich Clark, Alan Zeller, Jerry Galus, Audrey Cass, Joel Harrington, Ivy Vann, Tom Weeks, Barbara Miller and Rick Monahon.

**Also Present:** Carol Ogilvie, Director Office of Community Development, Laura Norton, OCD Administrative Assistant and Dario Carrara, Code Enforcement Officer

The Peterborough Planning Board held its regularly scheduled meeting on Monday, February 13, 2012 in the Selectmen's Meeting Room of the Town House. The meeting was called to order at 7:02 p.m.

Vice Chairman Monahon began by noting Chairman Leandra MacDonald would not be present and that he would chair the meeting. He welcomed the audience and introduced the members and staff. He noted the first item on the agenda was an application for a Lot Line Adjustment between Parcel U023-015-000 at #1 Winter Street, owned by George and Judith Pellettieri, and Parcel U023-016-000 at #16 Elm Street, owned by George Duncan; both lots are in the General Residence District.

Public Hearing on Lot Line Adjustment

George Pellettieri introduced himself and his wife Judith as the property owners of #1 Winter Street. He also introduced George Duncan of 16 Elm Street who was in the audience. He noted the lot line adjustment "is taking a portion of Mr. Duncan's property and adding it to our Winter Street parcel."

Mr. Pellettieri briefly described his parcel as the one that had a demolition of an old home (saving a portion of the post and beam second floor) that was on "stilts" for several days while a foundation was poured and supports constructed. He pointed out the property lines on a graphic he had handed out noting "there are actually two deeds with two separate lots that make up the property. He pointed out the main lot where the house sits and a long sliver-shaped lot behind the house. He noted that an addition was put on "sometime in the 50s" adding "it was fairly common to do something like that and discover afterward they had gone over their property line." Mr. Pellettieri went on to explain "then they would purchase that land to make the property legal. That is what happened in this case."

Mr. Pellettieri noted Mr. Duncan had installed a fence short of his property line some time ago and he had approached Mr. Duncan and offered to purchase the portion of land on the Winter Street side of the fence (essentially adjusting the lot/boundary line). He added "I have a survey and that is in the plan in front of you."

Vice Chair Monahon replied "this is a very typical negotiation and transaction with the neighbor. I commend you." He went on ask if (procedurally) the Board might deliberate the case right now.

Ms. Ogilvie replied “you may choose to act on it immediately but first you must accept the application as complete.”

A motion was made/seconded (Vann/Harrington) to accept the application as complete with all in favor.

### ***Deliberation***

Mr. Weeks asked if the intent of the lot line adjustment was to bring the building into compliance with the side setback. He then asked “does it meet setback now?” Mr. Pellettiere replied “no, it does not but it is less non-conforming than it was.” Mr. Weeks asked “is it higher than it used to be?” Mr. Pellettiere replied “no, in the original plan it was but we found out we needed to lower it and we did.” There were no further questions for the Board and no comments or questions from the audience.

A motion was made/second (Vann/Harrington) to approve the boundary line adjustment with all in favor.

### **Public Hearing on the Cultural Resources Chapter of the Master Plan**

Vice Chair Monahon noted several members of the Cultural Resources Subcommittee were in the audience. Vice Chair Monahon noted he had served on that Subcommittee as a representative of the Planning Board. He introduced Mose Olenik who spoke briefly about the chapter. She concluded by noting “we are hoping to get your blessing tonight to move forward with this chapter.” Vice Chair Monahon thanked the members present adding “it was a richly diverse committee and did a lot of work to get this chapter pulled together.”

Mr. Harrington noted suggestions by the Planning Board in past meetings and asked “have there been any changes since?” Ms. Olenik replied “no, nothing has changed.” She went on to note the members had considered the Planning Board suggestions, particularly the inclusion of several maps but decided against it noting “they change over time so anything more than referencing them in an appendix would be a frustrating thing for us to try to maintain.” Ms. Miller asked “how often do you review it?” with Ms. Olenik replying “that is just the problem; there are many other chapters that are much older that we need to tackle (for re-review).” Ms. Miller replied “well you have all done a terrific job, thank you.”

A motion was made/seconded (Miller/Vann) to approve the Cultural Resources Chapter of the Master Plan as written with all in favor.

### **Public Hearing for Proposed Zoning Amendments**

“Let’s start at the beginning” said Vice Chair Monahon.

### **Amendment #1: Setbacks for Sheds**

Vice Chair Monahon read the amendment. The purpose of this amendment is to allow greater flexibility for homeowner to locate such structures as a garden shed in a back corner of their lot.

A brief discussion about what constituted a shed, playhouse or similar structure followed. It was noted these structures are not usually things with permanent foundations and are limited by size.

Richard Fernald introduced himself and said “I have mixed feelings” adding “I am here to object to some of the proposed amendments.” He went on to note that this particular proposal “is not in the zoning ordinance it is in the building code.” Ms. Ogilvie noted Mr. Fernald was correct “and that is why this is here; we are trying to shift it to zoning where it belongs.” Mr. Fernald noted in response “this is just part of the problem I see coming up with some of the other proposals. If no more attention has been paid to this than the other amendments, I see a problem.” He noted the proposal allows playhouses, sheds and similar structures up to 120 square feet anywhere and added “I have not gone through the entire zoning to see if this makes a difference but I think someone ought to.”

Vice Chair Monahan redirected by noting the purpose of this meeting is to review amended or new language to a regulation. He recalled discussion about setback exceptions in previous meetings and recommended the members stay on track.

Ms. Miller interjected “it is not clear if you are for or against this and why.” Mr. Fernald noted he would speak again when the members got to Amendment #5. He added “taking this out of the building code and putting it into zoning with no effort to check through the zoning to see if this would have a bad effect on those ordinances may drastically and substantially change them (the ordinances). He concluded by noting “someone did not think very far ahead if the zoning amendments we have not talked about are enacted.”

#### Amendment #2 Shoreline Conservation Zone

Vice Chairman Monahan read the amendment. The purpose of this amendment is to provide the same opportunity for fire protection uses without ZBA approval that currently exists in the Wetland Protection Overlay Zone. No further discussion warranted.

#### Amendment #3 Downtown Commercial District Height Standards

Vice Chairman Monahan read the amendment. The purpose of this amendment is to provide flexibility within the downtown core, where there is very little land for new development, for buildings to be higher and thereby provide useable space.

A brief discussion about the current height allowance of 50 feet versus the proposed allowable height of 65 feet followed. That discussion included references to the International Building Code (IBC), grade to overall height ratios, the heights of the downtown building today and visual impacts.

When asked if the amendment would go into §245-20 Mr. Carrara replied “yes” and read a portion of that regulation. Mr. Harrington admitted the lawyer in him was coming out and asked to see consistency of the language between the two paragraphs of the regulation.

Mr. Weeks suggested “let’s just take out the 50 feet and put in 65 feet. Ms. Vann interjected “and make the two paragraphs match.” The members briefly discussed what constitutes height (feet versus stories) with Vice Chair Monahan noting “I am opposed to it” adding “I have to say a 65

foot height could have numerous unintended consequences. The downtown is our gem historically; it is our piece of history.”

The members then specifically noted that nonstructural components (mechanical equipment, cupolas, and weather vanes) are not included in the height of a building provided the combined height does not exceed 60 feet. Mr. Carrara interjected “while I have you all here, if you say the mechanical equipment is not counted in the height of the building are screens for them allowed?” He went on to note “My sense is that if it is not structural and we allow mechanical equipment not to count as part of the height then it should be allowed.”

Francie Von Mertens introduced herself and noted she had attended a previous meeting where the discussion involved creating a mock-up of the existing downtown buildings to have a visual of the height difference. “I would like to see the Peterborough skyline with a 65-foot building” she said. Ms. Vann asked if a model of the town existed. It was determined a model did exist at one time but its whereabouts were a mystery. Ms. Salinger introduced herself and asked “what is the purpose by right versus being allowed by a variance as is the case now?” adding “the ZBA could make decisions on a case by case basis whereas by right there are no safeguards.” A brief discussion followed with Vice Chairman Monahan concluding “I think we should leave this one alone right now. There is a procedure in place; if someone wants to go higher they can go to the ZBA for a variance if they meet the criteria.” Ms. Vann agreed noting “if a process exists, this may be redundant.” Ms. Von Mertens interjected “so you will do a mock-up?” with Vice Chair Monahan replying “we will need to talk about it; tonight we are really just trying to get a sense about things before any action.”

James Kelley in the audience asked “why is this being proposed?” Ms. Ogilvie replied “this is something that the Planning Board has talked about for a while.” She added “when we had to post the notice I needed a maximum number so I stayed with 65 feet for the lack any better information at the time. There is no one particular reason for it (the number).” Mr. Kelley asked “how about the hotel?” Ms. Ogilvie replied “they have not submitted any plans.”

#### Amendment #4 Nonconforming Buildings

Vice Chairman Monahan read the amendment. The purpose of this amendment is to provide relief for buildings that are nonconforming because of a setback issue, not a height issue.

Ms. Vann noted “I think this is perfectly reasonable as long as it does not become more nonconforming” adding “it solves very real problems without creating new ones.” When Vice Chair Monahan asked Ms. Ogilvie about the proper way to review this amendment Ms. Ogilvie replied “this is really a building permit issue” adding this would allow the code officer to view a site without coming before the Planning Board to judge if it conforms. Ms. Vann asked “how hard will this be to do?” with Mr. Carrara replying “that is a good question.” A brief discussion about how to go about the process of determining the maximum height of a building (including the consideration of the prevailing height of the buildings along the street and the height of abutting buildings) followed. The members also discussed the examples of additions or changes to or replacement of nonconforming buildings so long as they do not create further encroachment into a setback.

Amendment #5 Definitions

Vice Chairman Monahan read the amendment. The purpose of this amendment is to amend two definitions for clarity, delete one that no longer has a reference in the ordinance and add three definitions that are currently lacking in the ordinance.

Vice Chair Monahan began with **Buffer**. He read the change in the definition without objection. **Fast Food Service** was read (this is the definition to be deleted as the use is not stated in the ordinance) with no objection. **Parking Facility** definition was read with no objection. Chair Monahan continued by reading **Roof, Setback** and **Structure**.

The members entered a lengthy discussion about the definition of structure. A variety of combination for requirements were discussed (i.e. walls and wall supports without a roof, walls and wall supports with a roof, roofs without walls and wall supports, permanently versus temporarily affixed (or not) to the ground, etc.). One member summarized “so a building can be a structure but structures may not be buildings.” The discussion about structure was particularly brisk. Ms. Vann suggested “if it does not accomplish anything let’s get rid of it.” Mr. Weeks pointed out “there are no setbacks for a structure.”

Mr. Fernald once again stood and told the members he needed a bit of their time to explain why he was objecting to certain proposed amendments. “I want to make sure the Planning Board fully understands how these proposals may have a drastic and substantial effect on Peterborough's zoning as well as the effect they may have on real estate in town.” Mr. Fernald asked “please bear with me as I show you how your proposed changes will open up a Pandora’s Box in the administration of zoning if they are approved.” He recalled an evening in September of 2011 when he came home from work and his wife pointed out what she thought was the construction of a garage at the end of their neighbor’s driveway. He said he told himself then “that cannot be a garage, zoning would not allow it.” He told the members he went over to the neighbor’s the next day. He did not find them home “but I did find this” he said holding up a picture of horizontal and diagonal timbers configured to hold (store) cordwood. He went on to give the dimensions of the configuration.

Mr. Fernald told the members “my thought was *gosh*, they can’t do that” so his next step was to visit the Planning Office.” He learned that there was no building permit issued for the configuration (which Mr. Fernald reported as being one inch from his property line and only five feet from the street). He briefly reviewed §245-6 that requires a 30-foot front setback and a 25-foot side setback. He read the definition of setback (§245-6(57)) as an undevelopable space on the same lot, extending from the property line into the lot, which shall remain open and unoccupied.” He told the members the code officer followed up with his neighbor and a few days later the neighbor moved the configuration back towards his own home.

Mr. Fernald also reported he had been informed by the Code Officer that “structures up to 120 square feet are exempt for the permitting process but must meet the setback requirements (but) one such structure may be located up to 5-feet from the side or rear property lines.” He went on to note “I went through the zoning ordinance and I could not find the exemption” adding “I did finally locate it in the Peterborough *Building Code*.”

Mr. Fernald noted a few days passed and (holding up another photograph) told the members “I woke up to be greeted with this.” (The photograph showed the wood configuration filled with wood and covered with a blue tarp). Mr. Fernald said he asked himself how this could happen and why didn’t the front setback provision of the zoning ordinance prevent this. As he pointed at the wood configuration he looked at the members and said “but there it is.”

Mr. Fernald pointed out changes in the language of the ordinance (specifically *structure*) “and I found that a definition of *roof* had been added for the first time” adding “and that definition says a roof must have a rigid building element, constructed of solid material, such as but not limited to wood, metal or concrete and held up by structural supports.”

Mr. Fernald reported that when he reviewed the copy of changes prior to the February meeting he discovered changes made to the definition of setback and a new definition for structure. He read the new language and asked “why did the Planning Board suddenly decide to define the word structure? Mr. Fernald told the members he had looked up the word structure in the dictionary and holding up yet another photograph of the wood configuration said “using the dictionary definition the building that sits in my northeast corner is certainly a structure” adding “the definition fits it to a tee.” Mr. Fernald concluded with the opinion that “the roof definition and change to the setback are aimed right at this thing” adding “it is illegal now and has been illegal since September and so far no one has made one step to correct it.”

Vice Chair Monahan interjected “before I would call any of this repetitive I will suggest we move on.” A brief discussion about Mr. Fernald’s concerns followed. Mr. Zeller suggested removing the word “solid” from the roof definition and replace it with the word “any” adding “putting a canvas roof on sort of gets around it (the ordinance).” The members also briefly discussed the language of the setback (particularly the minimum distance required to be maintained between structures. Mr. Fernald suggested the members ask one of their own (Board member William Groff) about the law. “It will wipe out all the setback requirements.” (Mr. Groff is a retired judge). Chair Monahan thanked Mr. Fernald for his public input.

#### Amendment #6 Parking Requirements

Vice Chairman Monahan read the amendment. The purpose of this amendment is to address parking requirements for uses that are allowed in the zoning ordinance but do not have parking requirements.

Chair Monahan noted in particular conference facilities (1 space per 3 seats), educational facilities (2 spaces per 1,000 square feet of gross floor area) and religious facilities (1 space per 4 seats). Mr. Harrington noted the need for definitions in this amendment.

#### Amendment #7 Sprinkler Exception for Agricultural Buildings

Vice Chairman Monahan read the amendment. The purpose of this amendment is to exempt agricultural buildings up to 12,000 square feet size from the sprinkler requirement of the Building Code and relieve some of the burden and cost of construction for buildings that are not intended for human habitation.

It was noted the current ordinance requires every new building of more than 5,000 square feet in area or any improvement of a non-residential building of 5,000 square feet or more must have a fire sprinkler system. Vice Chair Monahon noted this amendment had come from the Agricultural Commission “they petitioned us for relief” he said. There was no further discussion.

Vice Chair Monahon closed the public hearing at 8:25 p.m.

Preliminary Consultation for Peterborough Players Temporary Staff Housing

Vice Chair Monahon recused himself after he appointed Ms. Vann to Chair the conceptual hearing.

Keith Stevens introduced himself as Managing Director and Dan O’Brien as a Board Member of the Peterborough Players. Mr. Stevens noted “we are here tonight to represent the Players in presenting a conceptual consultation for staff housing on a seasonal basis at the theater” adding “this is an idea we have had for a long time.” He went to give a brief overview of the staff including 15 interns, 10 seasonal staff and 10-15 people in the acting company. He described one house on the adjacent property with 3 beds that they do use but noted “it is always difficult for us to find housing and it seems to get harder every summer.” He noted “we feel we could consolidate the housing on our campus which would alleviate the need to find housing off campus as well as the number of vehicles back and forth each day.”

Mr. Stevens described a fleet of 11 cars transporting staff and actors to and from the theater and added “on-site housing would create more of a campus atmosphere and bring in efficiencies as well.”

Mr. Stevens distributed a graphic that showed 11 duplex-type structures. He noted “these are basically bedrooms with no kitchens and shared baths. Mr. Monahon interjected “what you have is not a design but a rough site plan to get a sense of scale and position.” He pointed out several landmarks on the plan and reiterated the housing would provide 28 beds single story, single and two-bed units with a bathroom) and a shared kitchen, dining and laundry building. “There is really no complex living space” he said. “Looks like summer camp to me” interjected Ms. Vann. Mr. Stevens assured the members there is no plan to subdivide or sell these off; it is only for staff housing for the future.”

Mr. Harrington noted a personal experience with this type of housing and asked Mr. Stevens if they had thought about dormitory style housing. Mr. Stevens replied that they had “but we felt this concept (referring to his handout) gives a bit more privacy” adding “we get 25-26 year olds and we would like to give them a bit more privacy than what a dorm structure can provide.”

Another member asked about full season use of the theater with Mr. Stevens noting the condition of Hadley Road and the unpredictability of winter weather. “I don’t think the site lends itself to that” he said.

Mr. Monahon noted “the plans have a long way to go but we will be back in the role of a site plan applicant soon.”

Mr. Weeks suggested they “pass this by the Fire Department for access before you come back.” Ms. Cass agreed noting “those types of things should be ironed out before you come back.” She went on to add “I am very excited about the plan, I have offered my home (to the Players) and you are right, they are adults.”

Ms. Vann asked “just out of curiosity what is your time frame?” Mr. Stevens replied “if all goes smoothly we would love to work on them this fall and be ready to go for the summer of 2013.” There were no other questions. Mr. Stevens and Mr. O’Brien thanked the Board for their time.

#### Minutes

A motion was made/seconded (Harrington/Vann) to approve the Minutes of January 9, 2012 and January 23, 2012 as written with typo corrections.

#### Status of Member Terms/Filing Deadlines

Ms. Ogilvie reviewed the status of the member’s terms noting “Joel and Bill must file this year for election.” She noted they may file between March 21<sup>st</sup> and March 30<sup>th</sup> with the Town Clerk. Since Mr. Groff was not present it was noted that he should be reminded of this deadline.

#### Report out of Planning Board Members serving on other boards

Vice Chair Monahan gave a brief status of the Master Plan Steering Committee and the subcommittee for the Cultural Resources Chapter of the Master Plan (he serves/served on both).

In closing Ms. Ogilvie noted four petitions had been received and proposed they have a public hearing on February 27, 2012 “to discuss the petitions as well as discussion on the outstanding items from tonight.”

#### *Deliberation*

Vice Chair began with “let’s start at the top.” Ms. Vann interjected “I think the only real thing is the bloody structure definition.”

#### Amendment #1 Setbacks for Sheds

A motion was made/seconded (Weeks/Vann) to support this proposal and send it to ballot with all in favor. This would delete Paragraph F from §207-6 (Building Code) and add it to §245-5 (Zoning Ordinance). [**Note to Board: Carol needed to re-post this one because the “limited to one such structure” was not included in the previous posting.**]

#### Amendment #2 Shoreland Conservation Zone

A motion was made/seconded (Weeks/Vann) to support this proposal and send it to ballot with all in favor.

#### Amendment #3 Downtown Commercial District Height Standards

Ms. Vann began with “I think we should table this until next year” adding “I think we all agree we would like to see what (65 feet) looks like.” Mr. Carrara interjected “and in a year you will have a building to look at (in reference to the new Rivermead campus). Ms. Vann noted “there is

a process in place and if anyone were to get into a crunch they could go to the ZBA.” The member agreed to invest more time and research for this proposal.

#### Amendment #4 Nonconforming Buildings

The members briefly discussed the difficulty in dealing with prevailing heights, adjacent buildings and how far in each direction that one looks. Ms. Vann noted “if it were up to me it would be the allowable height of the district and that would be it.” The members also discussed height being measured in stories, not feet and the difference between residential and commercial buildings. The members reviewed the current review process that is conducted by the ZBA with Vice Chair Monahon noting “it there is no real strong consensus on this we should table it.” The members agreed to invest more time and research for this proposal.

#### Amendment #5 New or Amended Definitions

The members spent some time discussing the definition of roof being a rigid building element constructed of solid materials. They also discussed canvas and soft membrane coverings. Mr. Carrara gave an explanation of how he had come up with a definition. The members also discussed the literal definition of setback including *undeveloped space* and *open and unoccupied*. Mr. Carrara noted “if setbacks need to be left open and people get told they can no longer park their camper or boat or whatever where they always have we are going to have line out of Pam’s office.” Ms. Ogilvie added that “this is a case of a definition trying to regulate, and that is not appropriate”; if the setbacks are to remain completely open, there needs to be a regulation that says that. After additional discussion Ms. Ogilvie suggested if the definition of structure doesn’t do anything (has no value) and “just creates a dilemma we wrestle with we should strike it.” “Then let’s strike it” replied Vice Chair Monahon. The members agreed to further discuss the amended definitions of Buffer and Setback and add the definition of Conference Facility at the next public hearing.

#### Amendment #6 Parking Requirements

The members briefly reviewed the parking requirements for conference, educational and religious facilities. A motion was made/seconded (Vann/Weeks) to support this amendment and send it to ballot with all in favor.

#### Amendment #7 Sprinkler Exemption for Agricultural Buildings

A motion was made/seconded (Weeks/Harrington) to support this proposal and send it to ballot with all in favor. Mr. Harrington noted a definition of agriculture would be needed.

The meeting adjourned at 9:25 p.m.

Respectfully submitted,

Laura Norton  
Administrative Assistant

**Approved March 12, 2012**