

PLANNING BOARD
Town of Peterborough, New Hampshire

Minutes of January 22, 2020

Members Present: Dario Carrara, Rich Clark, Sarah Steinberg Heller, Judy Wilson Ferstenberg, Tyler Ward, Alan Zeller and Ed Juengst by telephone

Also Present: Pete Throop and Laura Norton, Office of Community Development

Chair Carrara called the Workshop to order at 5:30 p.m. He welcomed the audience and introduced the Members and Staff.

Before opening the workshop, Chair Carrara appointed Mr. Juengst to sit, took a moment to review the agenda and give a brief review of the *Citizens for Sensible Zoning*. “This is the group that requested the workshop” he said adding “it is a bit unusual, but we were approached by the group with proposals for zoning changes and as a courtesy we scheduled this meeting.” He noted many members of the group were present “with leadership to present what those changes would be and then the Board will discuss what, if any actions to take.” He reminded the audience “this is a public meeting, but it is *not* a public hearing” and public input may be limited. He then read the notice:

Zoning Workshop:

A Public Workshop to consider a citizen request that asks the Planning Board to put forth amendments to the zoning ordinance relating to Section 245-15.3 Traditional Neighborhood Overlay Zone 1, and possibly other sections of the Zoning Ordinance for consideration by the voters on the Official Town Meeting Ballot on Tuesday, May 20, 2020.

Mr. Throop noted that the original public notice (published January 9, 2020), “went into some depth and contained information that may have evolved since then.” Chair Carrara asked if anyone in the audience felt the original notice was inaccurate and approximately 14 people raised their hands. Mr. Throop told the audience the Group had met since the notice and refined their proposal “which often happens at this stage in the development of a zoning amendment. That is the nature of the process” he said.

Joann Carr introduced herself and thanked the Members for their time. Referring to the notice she conceded that it may seem complicated and that its purpose was not to rezone the entirety of the Family and General Residence Zoning Districts. “That is not our intent” she said. Ms. Carr told the Members while the Housing Task Force was in full swing and working to accomplish a diversity of housing options while protecting the natural and cultural resources of the town “we are suggesting an interim alternative and an amendment to the TNOZ 1 Ordinance.”

Ms. Carr proceeded by going back to the Citizens’ Petition (Zoning Amendment 15) from last year. (*Amendment 15 was a Citizen’s Petition to repeal Section 245-15.4 Traditional Neighborhood Overlay Zone II in its entirety and amend 245-15.3 Traditional Neighborhood Overlay to decrease minimum standards for frontage, lots size and setback requirements (front, side and rear).*)

Ms. Carr noted two major concerns, the first of which is the density allowed by the Traditional Neighborhood Overlay Zone 1 (TNOZ 1) which allows a much higher density that is not in alignment with village neighborhoods when compared to communities such as Concord and Keene, New Hampshire. “We are not opposed to greater density development” she said adding “we just want to get to a common ground.” The second concern was the application of RSA 674:21 Innovative Land use Controls and its requirement for clear standards when granting Conditional Use Permits and waivers. Noting TNOZ 1 was adopted under this statute and is required to incorporate criteria for waiving standards.

She continued by indicating an interest in allowing the conversion of single-family homes in the Family District up to three-family *and* a slight increase in the allowed size of Accessory Dwelling Units (ADUs) from 750 to 800 square feet and/or a greater percentage of the habitable living area formula, whichever is greater.”

Ms. Carr noted ADUs must be owner-occupied and the ADU status is recorded at the Hillsborough County Registry of Deeds. “We would like to provide more flexibility in the permitting process of ADUs” she said.

Ms. Carr briefly reviewed the dimensional requirements for the TNOZ 1 ordinance (including lot size; units per acre; frontage; and front, side and rear setbacks) and a very brief discussion about the current ADU ordinance followed.

Ms. Ferstenberg interjected she had done some research and told the Members the current TNOZ 1 Ordinance does allow greater densities than Keene or Concord. “We should stay with what is traditional” she said. Ms. Carr replied, “as a whole the TNOZ 1 offers too much density, we want to see if there is a consensus between that ordinance and Amendment 15 and come to middle ground.”

Stephanie Hurley introduced herself and told the Members “what is proposed in Amendment 15 *is* that middle ground.” Chair Carrara asked (in regard to the TNOZ 1) “so modify it or rescind it?” Ms. Carr interjected “we know that is a heavy lift between now and May and noted that if the ordinance was rescinded it would affect the entirety of the General Residence and Family Districts, “not just the TNOZ 1 Overlay.” A review of the reductions in lot size, setbacks, frontages for both Districts as well as units per square feet (General Residence) and building coverage not greater than 25% with no multi-family units (Family District) followed. It was noted that if the TNOZ 1 Ordinance was repealed they must come up with dimensional numbers that work for the entirety of the Districts, not just the Overlays.

Ms. Carr reviewed a list of criteria for inclusion in the zoning code for granting Conditional Use Permits (CUPs) in the TNOZ 1 Ordinance noting it would bring the ordinance into consistency with the state guidelines for innovative land use.

That criteria included providing affordable housing and/or providing for protection of historic buildings and cultural resources; providing adequate sidewalks and parking that does not detract from the streetscape; be in keeping with the massing and architecture of the neighborhood; providing infill development that uses existing infrastructure and contributes to pedestrian access to public and community amenities and resources (creating a walkable town). She cautioned extra density does not necessarily provide affordable housing. “Builders are in the business of earning an income and paying their workers while making the maximum profit they

can” she said adding “but there are mechanisms for the creation of affordable housing, there are tools available that can be taken advantage of by the builders.”

Ms. Carr concluded by noting “the granting of waivers should have a very high bar” as she pointed out that waivers should not be contrary to the public interest; the spirit of the ordinance must be observed; substantial justice must be done, waivers should not diminish the value of surrounding properties and owing to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship.” She looked to the Members and said, “there should be a *very* specific reason for asking for a waiver.” When the comment was made, Ms. Carr agreed the criteria was very similar to the Zoning Board of Adjustment’s criteria for a Variance. “This is where we would like to start the conversation with the Board” she said.

Chair Carrara asked “so it is a one size fits all? Or if the TNOZ 1 were rescinded would all the lots (in the affected districts) be treated the same? What about lots not on town water and sewer?” Ms. Carr replied, “at this time we are only talking about lots with town water and sewer.”

Libby Reinhardt introduced herself and emphasized that much of the approach would be on a case by case basis. “This is a proposal and has to be discussed by the Board” she said. Chair Carrara replied, “we’ll need a benchmark for what you are bringing to the Members.” He then charged the Board to note the merits of the proposal for discussion on what action to take going forward (and) if so, a timeline.

As their Board Rules and Procedures were projected, Chair Carrara specified Section IX *Submission of Ordinance/Regulation Changes* and read the requirement for submitting amendment proposals to the Planning Board no later than the October regulatory Meeting. He looked up and said, “this is not a petition, it is a bit unusual for a group to submit such a large change to the Board” adding “in open-ended fairness it is best to listen to the proposal and their views of change.” He also noted the timing issue involved with SB2 Town government (and) the fact that the town has an active Housing Task force working on affordable housing. He asked if anyone in the audience could give a brief update on the Task Force.

Karen Hatcher introduced herself and gave a brief update of the newly formed housing task force. “We have been meeting since October now, with a timeframe of about 18 months. Our next meeting is January 25th at 8:00 a.m. at the Community Center” she said. She went on to say, “we’re in the informational stages right now with about 30 members who are working on what the housing needs are for our community, inform ourselves about the issues and build trust and relationships so we can create an informed policy.” She concluded by noting other organizations (Plan NH, NH Housing Authority and NH Listens) that have gotten involved in working on methods of engaging the community for input and creating and defining how to go out into our neighborhoods as Task Force Ambassadors.”

Ms. Reinhardt thanked the Task Force for a great process but added “we are proposing and interim measure.” Noting the amount of time the process could take, she told the Members “there will be nothing on the ballot until 2022, we are looking at two and a half years out, this is interim measure while going through the process.” Ms. Hatcher interjected the possibility of a special town meeting if the Task Force were to formulate their plan earlier than expected.

Ms. Carr concluded “we appreciate your time; we know the crunch, but this is not radically new, and we have been trying to meet with the decision makers and town administration since May so we don’t feel we are too late to the table on this issue.” When Chair Carrara revisited the short

time frame Ms. Ferstenberg interjected “why don’t we just ask them what they want instead of trying to shut them down?” A brief discussion about the timeframe and the “reasonability” of further discussion on the matter followed. Mr. Clark concluded “we want to put the public first; this is *not* so much of a stretch that I am not willing to go along and have another workshop and public meeting to see what comes of it.”

Citing the Housing Task Force, the Master Plan Steering Committee and the Planning Board itself, Ms. Heller said, “we should not do this” and advocated “trusting the process.” Ms. Heller noted the town having been torn apart by this issue last May. “The loudest people are hijacking the process” she said adding “there seems to be a pressure to put this on the ballot in May or there will be a warrant article, is that a threat?” She concluded by reiterating a caution not to rush the process. This is the first meeting about this, let’s not rush” she said.

Mr. Throop gave a brief review of the 2020 SB2 Town Meeting Calendar dates of significance which included: Monday, January 13, 2020 – first day to accept petitions to amend zoning ordinance, historic district ordinance or building code for construction at the 2020 Town Meeting; Wednesday, February 12, 2020 – last day to accept petitions to amend zoning ordinance, historic district ordinance or building code for construction at the 2020 Town Meeting; Wednesday, March 4, 2020 – last day to post and publish notice of first public hearing on March 16 for proposed adoption or amendment of zoning ordinance, historic district ordinance or building code for construction if a second hearing is anticipated.

For clarification Mr. Throop noted their Rules of Procedure for submittal of ordinance/regulation changes state “anyone wishing to submit proposals to the Planning Board for amendments to any of the Land Use Regulations must do so no later the October regulatory meeting.” He reminded the Members petitions to amend the zoning ordinance must be submitted to the Board of Selectmen no earlier than 120 days and no later than 90 days prior to Town Meeting. Upon receipt, the Board of Selectmen will submit the petition to the Planning Board at the regularly scheduled meeting at which time a public hearing on the petition will be scheduled. At that public hearing the Board will vote whether to support or not support the petition.”

Mr. Throop also reviewed several potential dates for workshops and meetings, reminding the Members that subsequent public hearings must be posted 14 days apart. “January is full” he said as he proceeded to potential dates in February and March taking into account other Board and Committee’s regularly scheduled meetings as well as a Federal Holiday in February. “The best we can do is notice a workshop for February 10th with the following week available if necessary” he said.

Ms. Heller spoke briefly about building trust and rushing this to May (Town Meeting) of 2020. “That does not sound like trust to me” she said adding “we have a process in place here, it is frustrating.” Ms. Heller concluded by saying she did not feel all the voices (townspeople) have been taken into account and advocated that the citizen’s group not to rush into an interim fix (“it will not make the people happy” she said) and join forces with the Housing Task Force and work together to “figure this out as a town.”

Ms. Ferstenberg told the Members she felt the people who care “are here right now.” She went on to say she felt the Board can give the impression they do not care about the people noting “that is how I felt when I sat in the audience. She acknowledged the Board’s wisdom but added “we need to know what the people want.”

Mr. Juengst noted he felt the Citizen's Group had been well represented by Ms. Carr's presentation and acknowledged compromises on both sides would be necessary to come together. He wondered about the timing and told the Members he would rather see the Ordinance tweaked rather than rescinded. "I am not against trying to work with it" he said adding "and we need to start building trust with the Board, show we listen, I would not be against that if it is possible."

Mr. Ward agreed and noted they should make an attempt to have a couple of back to back workshops to further discuss the request. While Chair Carrara agreed, he added "we can entertain a couple of workshops but that does not mean we'll pull it together in time for the ballot."

A very brief discussion about the process in adopting the TNOZ 1 followed with several of the Members acknowledging the numerous meetings over the months and years only to be criticized over and over again that they did not do enough outreach and that they were going too fast. Many agreed they were facing a similar situation and while they agreed with many aspects of what was being proposed "fairly significant changes in a few short weeks is not wise from a procedural point of view. "There are 6500 people here. We have rules and procedures to abide by" said Ms. Heller.

Ms. Carr advocated "let the Housing Task Force do its thing but we can't wait for them. We need to come together, focus on the changes and come to an agreement as to how we can modify or rescind this ordinance and then take the nuts and bolts out to the underlying districts. We would like you entertain another meeting to see what we can get done " she concluded.

Mr. Zeller entertained a motion to schedule another workshop and reach out to as many people as possible to examine the potential changes. Another Member interjected it was important to examine where the aforementioned criteria was coming from and cautioned realizing enough time to understand and digest the amendment (adding "there may not be enough.")

Mr. Throop agreed noting work for the TNOZ 1 Ordinance was initiated in 2009 and adopted in 2014 "it took *five years* to develop this" he said adding "a process like this takes time."

A motion was made/seconded (Clark/Zeller) to convene a Planning Board Workshop on Monday, February 10, 2020 (following the regularly scheduled Planning Board Hearing) to further consider the citizen's request to amend 245-15.3 *Traditional Neighborhood Overlay Zone 1* with Mr. Clark, Mr. Zeller, Ms. Ferstenberg, Mr. Juengst and Mr. Ward in favor and Ms. Heller and Chair Carrara were opposed.

Other Business: None

The meeting adjourned at 6:55 p.m.

Respectfully submitted:

Laura Norton

Administrative Assistant