

**PLANNING BOARD**  
**Town of Peterborough, New Hampshire**

**Minutes of February 25, 2019**

**Members Present:** Ivy Vann, Alan Zeller, Joe Hanlon, Sarah Steinberg Heller, Tyler Ward, Jerry Galus, and Dario Carrara

**Staff Present:** Peter Throop, Laura Norton, and Kristin Bixby, Office of Community Development

Vice Chair Vann called the meeting to order at 6:30 p.m. She introduced the Members and Staff and Ms. Steinberg Heller was seated as an alternate.

**Minutes:**

A motion was made/seconded (Zeller/Carrara) to approve the Minutes of February 11, 2019 as written with all in favor.

Vice Chair Vann (Ms. Vann) briefly reviewed the agenda noting its three components: A Public Hearing on the eleven (11) Zoning Amendments proposed by the Planning Board this will result in a vote to move to the Town Meeting Ballot in May); a Public Workshop on two (2) Zoning Amendments proposed by the Planning Board (result to move to vote on March 11, 2019) and setting a Public Hearing date for two (2) Citizen Petitions for amendments to the Zoning Ordinance (also on March 11, 2019).

**Set Public Hearing: Two (2) Citizen Zoning Amendments:**

Ms. Vann reiterated there would be no public input or discussion on the Citizen's Petitions. While third on the agenda the members agreed to hear the petitions and move them to public hearing first:

**Petition#1:** "Are you in favor of the adoption of this amendment as proposed by petition for the Town of Peterborough Zoning Ordinance as follows: to rezone the land that previously consisted of one (1) parcel that is numbered as U018-087-000 at 10 Laurel Street from Family District to General Residential District?"

**Petition #2:** "Are you in favor of the adoption of this amendment as proposed by petition for the Town of Peterborough Zoning Ordinance as follows: A. to repeal Section 245-15.4 Traditional Neighborhood Overlay Zone II in its entirety and delete any references to it appearing throughout the zoning ordinance and B. to amend Section 245-15.3 Traditional Neighborhood Overlay Zone I, Paragraphs

E.3. and E.4. by deleting the words shown in strikethrough and adding the words in bold to read as follows:

*Lot and Yard Standards:* The following minimum lot and yard standards apply to subdivisions or the addition of dwelling units that do not involve subdivision. If a subdivision is proposed, each lot must meet these minimum standards. If no subdivision is proposed, the existing lot must meet these minimum standards before any additional dwelling units could be approved.

	<u>Family District</u>	<u>General Residence District</u>	
a. Frontage:	75 feet	<del>50 feet</del>	75 feet
b. Lot Size:			
i. Single Family:	10,000 sq. feet	<del>5,000 sq. feet</del>	7,500 sq. feet
ii. Two-Family:	10,000 sq. feet	7,500 sq. feet	7,500 sq. feet
iii. Multi-Family:	NA	<del>5,000 sq. feet plus</del> <del>2,500 sq. feet</del> <del>for each unit</del>	6,000 sq. feet for each unit

*Setback Requirements:* The front building setbacks shall be determined by taking the average of existing developed residential lots located on either side of the project parcel, on the same side of the street, based on the most recent Town mapping, as measured along the adjacent street frontage from the lot proposed for development. In no instance shall the front setback be less than ~~fifteen (15) feet~~ **twenty (20) feet** nor greater than fifty (50) feet. Minimum side and rear setback requirements shall not be less than ~~ten (10) feet~~ **twenty (20) feet** and may be greater if the Planning Board finds that unusual characteristics exist and a greater setback would be more in keeping with the character of the neighborhood and streetscape.

When several of the Members noted grammatical issues with the amendment, Mr. Throop replied “let me preface this with a statement” adding “we cannot change any verbiage, we are required to post the amendment as it was received.”

The Members agreed the Public Hearing for the two Citizen Amendments will be set for a date and time certain of March 11, 2019 at 6:30 p.m.

**Public Hearing: Eleven (11) Planning Board proposed Zoning Amendments:**

Ms. Vann explained that she would simply read through the proposed amendments one at a time and take comment, questions and concerns after each so as to vote on each amendment individually.

**Amendment #1:** *To amend 245-4 Definitions by adding definitions for “Clinic”, “Structure” and “Use” and modify definitions of “Bed & Breakfast Establishment”; “Dwelling, Two-Family”; “Professional Services”; “Recreational Facility” and “Setback.”*

Discussion: “These are all to clarify the ordinance” said Ms. Vann with Mr. Carrara adding “it is good, we need better definitions for all medical terms as we move forward so they don’t all fall into a generic bucket. I am glad to see it.”

Public Input: None

Motion: A motion was made/seconded (Carrara/Ward) to move the proposed zoning amendment to ballot with all in favor.

**Amendment 2:** *To amend Section 245-4 Definitions by modifying the use definition of “Health Care Facilities”; adding the definition as a permitted use in Section 245-9 “Village Commercial District” and 245-9.1 “West Peterborough District” and deleting q qualification of the use in Section 245-10.2 “Business/Industrial District.”*

Discussion: Ms. Vann again noted “this removes two specific uses listed within the general use definition and adds the use as permitted in additional districts. When asked about the Monadnock Healthcare District Mr. Throop replied, “it is not being added because all of the individual uses are already listed there as permitted.”

Public Input: None

Motion: A motion was made/seconded (Zeller/Carrara) to move the proposed zoning amendment to ballot with all in favor.

**Amendment 3:** *To amend 245-4 Definitions by adding a new use definition “Residential Care Facility” and adding this definition as a permitted use in 245-9 “Village Commercial District”, 245-9.1 “West Peterborough District”, 245-9.2 “Monadnock Healthcare District” 245-10 “Downtown Commercial District” and 245-11.2 “Retirement Community District.”*

Discussion: “This amendment combines similar uses into a consolidated use definition” said Ms. Vann.

Public Input: None

Motion: A motion was made/seconded (Zeller/Carrara) to move the proposed zoning amendment to ballot with all in favor.

**Amendment 4:** *To amend 245-4 Definitions by adding a new definition “Residential Drug and Alcohol Treatment Facility” as a permitted use in 245-9 “Village Commercial District, 245-9.2 “Monadnock Community Healthcare District” and 245-10 “Downtown Commercial District.”*

Discussion: The Members agreed this new definition would define a use that is otherwise ambiguous. Mr. Throop added “and it expressly defines *where* the use is permitted.”

Public Input: Colleen Stone asked for clarification on where the use may be permitted with Ms. Vann responding.

Motion: A motion was made/seconded (Zeller/Carrara) to move the proposed zoning amendment to ballot with all in favor.

**Amendment 5:** *To amend 245-9.2 “Monadnock Community Healthcare District to allow clinics that may provide outpatient treatment for drug or substance abuse as a permitted use.*

Discussion: Mr. Throop noted “again this amendment clarifies *where* outpatient substance abuse treatment facilities are permitted without creating a new definition. This is the only district where this use will be permitted.

Public: None

Motion: A motion was made/seconded (Zeller/Carrara) to move the proposed zoning amendment to ballot with all in favor.

**Amendment 6:** *To amend 245-7 “General Residence District” and 245-8 “Rural District” to eliminate the requirement for a Special Exception from the ZBA for siting a church (religious institution) in these districts. As a result, “Religious Institutions” will be listed as a permitted use in those districts. This amend amendment will also modify the name of an existing permitted use to be consistent with the corresponding use definition in 245-4 “Definitions.”*

Discussion: “This is self explanatory” said Mr. Throop adding “this removes the Special Exception required for churches, and will allow religious institutions as a permitted use by right. This eliminates a potential conflict with federal law.”

Public Input: Ms. Laurenitis had several questions about this amendment. She noted research she’d done and provided data from both the Federal Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA) and Planning Commissioners Journal (No. 76, Fall, 2009). A brief discussion about religious assemblies and institutions (such as churches, temples, synagogues and mosques)

being treated the same as non-religious assemblies and institutions (such as community centers or theaters) followed. Mr. Throop noted the amendment did not change where the uses are currently permitted, “it is just removing the Special Exception part of it.” Ms. Vann added “religious institutions are not being held to a higher standard.”

Motion: A motion was made/seconded (Zeller/Carrara) to move the proposed zoning amendment to ballot with all in favor.

**Amendment 7:** *To amend 245-11.2 “Retirement Community District” (permitted uses) by eliminating the requirement for a Special Exception for siting commercial establishments that are limited in scope and intended to service the needs of the residents in the development. This amendment also eliminates valuation criteria that cannot be objectively measured.*

Discussion: It was noted this amendment simplifies the siting of accessory uses that meet preestablished criteria.

Public Input: None

Motion: A motion was made/seconded (Zeller/Carrara) to move the proposed zoning amendment to ballot with all in favor.

**Amendment 8:** *To amend 245-14 “Groundwater Protection Overlay Zone (GWPOZ)” to separate a paragraph that includes sewer connection requirements pertaining to all new residential developments and impervious service requirements related to all developments into two paragraphs. There are no proposed changes to any standards or procedures that will result from this amendment.*

Discussion: Mr. Throop noted this amendment clarifies the impervious surface standards that apply to all developments in the GWPOZ regardless of the type of use. Ms. Vann noted the amendment actually was considered after an application required a need to clarify it.

Public Input: Bill Chatfield asked, “this applies to all development not just residential right?” “It applies to impervious surfaces, not just residential development” replied Mr. Throop.

Motion: A motion was made/seconded (Zeller/Carrara) to move the proposed zoning amendment to ballot with all in favor.

**Amendment 9:** *To amend 245-15 “Wetland Protection Overlay Zone (WPOZ) to change the exemption for “sedimentation/detention basins” to “pre-existing*

*sedimentation/detention basins” and to allow all storm water management systems and utilities systems to be permitted and maintained in the Overlay Zone subject to the granting of a Conditional Use Permit.*

Discussion: Ms. Vann noted the concerns of the Conservation Commission for wetland protection and that they felt the current language was not in keeping with best practices. “So here this is” she said.

Public Input: None

Motion: A motion was made/seconded (Ward/Zeller) to move the proposed zoning amendment to ballot with all in favor.

**Amendment 10:** *To amend 245-24.6 “Workforce Housing” to clarify that “Multi-family Workforce Housing is permitted in any district that permits multi-family housing; to modify the criteria for waiving or modifying lot and yard standards; to establish a time frame that units will be guaranteed as affordable (required by statute;) and to eliminate an unnecessary annual housing evaluation.*

Discussion: Ms. Vann reiterated “the State requires we have language regarding Workforce Housing and we are working hard to accommodate.”

Public: Ms. Laurenitis asked, “what is the definition of workforce housing?” Ms. Vann noted the definition was listed in 245-24.6 “and defined under state statute 674:58 4.” Mr. Throop read from 245-4:2 which states “a) intended for sale and is affordable to a household with an income of not more than 100% of the median income for a 4-person household for Hillsborough County as published annually and b) is intended for rent and is affordable to a household with an income of no more than 60% of the median income for a 3-person household for Hillsborough County as published annually.”

Ms. Laurenitis asked about adapting the criteria and unnecessary hardship to an applicant under a Conditional Use Permit. A brief discussion ensued about the definition of hardship and what it means. Mr. Throop noted the Board’s authorization to issue CUP’s for an innovative design that may require a waiver to the Lot and Yard Standards as well as reiterating the importance of a guarantee of long-term affordability. He noted that the hardship test is not the same test required for granting a variance.

A motion was made/seconded (Zeller/Carrara) to move the proposed zoning amendment to ballot with all in favor.

**Amendment 11:** *To amend 245-42 “Duration of Approval” by replacing the language in Paragraph A with language that is consistent with State Statute 674:33.*

Discussion: Ms. Vann noted “the amendment will not modify the existing 2-year duration of approval, it just brings the ordinance into conformance with the State.” Mr. Throop noted Variances and Special Exceptions remain valid if exercised within 2 years from the date of approval and may be extended by the Zoning Board of Adjustment for good cause. He gave a brief review of the role of the Minor Site Plan Review Committee for minor plan changes. He noted the process for public and abutter notifications was the same “but it does not require a full Board.”

Public Input: Ms. Laurenitis asked what determined a substantial investment with Mr. Throop replying “a road has been built or utilities have been set in place. Things similar to this that shows the project is moving forward.”

Motion: A motion was made/seconded (Zeller/Carrara) to move the proposed zoning amendment to ballot with all in favor.

**Public Workshop: Two (2) Planning Board proposed Zoning Amendments:**

**Amendment #1:** *To amend 245-32 “Off Street parking” to eliminate detailed criteria that must be met before the Planning Board can reduce the number of required parking spaces for a proposed use during site plan review and to allow tandem parking to meet parking requirements for new residential development under certain conditions.*

Discussion: Ms. Vann noted the amendment would give the Planning Board greater flexibility when setting the required number of parking spaces during Site Plan Review as well as make the requirements for residential spaces consistent with other sections of the ordinance. “We’ve talked about this numerous times over the course of the last year” she said. Mr. Hanlon interjected “why would we want to tell people how to park their cars?” Ms. Vann noted that with the adoption of the Traditional Neighborhood Overlay Zones greater density is achieved “and this is a way to manage cars with less visual distress to the neighbors.” Mr. Throop noted “this is for new construction only.”

Public Input: None

Motion: A motion was made/seconded (Zeller/Carrara) to move the proposed zoning amendment to a Public Hearing on March 11, 2019 at 6:30 p.m. with all in favor.

**Amendment #2:** *To amend 245-41 “Conditions and Criteria for Special Exceptions” by deleting “Conditions for Appeals” from the title of the section, deleting and replacing all existing criteria with new general criteria and clarifying that the general criteria will only apply when specific Special Exception criteria is not provided elsewhere in the ordinance.*

Discussion: “This is for clarity and simplification in the application of general Special Exception Criteria” said Ms. Vann. A brief discussion about general and specific criteria followed and it was acknowledged when special criteria exists general criteria is not necessary. Noting the need for clarification Mr. Throop said, “some of these Special Exceptions are more arduous than getting a Variance.” He went on to say, “what we would like to do is eliminate what is there and replace it with the six criteria listed.”

Public Input: Mr. Throop noted a correspondence received by Alternate Member Sharon Monahan. This correspondence described her comments and recommendations regarding Special Exception Criteria. Ms. Monahan recognized the work Mr. Throop and Mr. Herlihy had put into clarification and simplification of the language noting she still thought there needed to be *less* verbiage. She noted her concern for the typical applicant who may have limited experience and knowledge of the process thus tripping themselves up at a hearing. In an email she wrote “It is my opinion that the criteria for 245-41 “Criteria for Special Exceptions” should not be applied to all. Some sections of the ordinance are very clear as to what criteria should be met in order to approve that Special Exception. One example can be found in 245-18.1 which states five (5) very clear and concise items to review for an approval of a sign. In my opinion, if a section of the Zoning Ordinance has a specific set of criteria applicable to that section, those and those only should be the reviewed criteria.”

Before the Members reviewed Ms. Monahan’s recommendations Ms. Vann suggested they review each one and make a decision as they go along. “One at a time” she said. Mr. Throop added “if we agree to a change we should do it tonight, so we can set the Public Hearing.” After reviewing the proposed criteria and Ms. Monahan’s comments, Mr. Throop noted that it was a burden for an applicant to have to address two full pages of criteria with Ms. Vann adding “and keeping the ZBA from deviating into Planning Board jurisdiction.”

Motion: A motion was made/seconded (Zeller/Carrara) to move the proposed zoning amendment to a Public Hearing on March 11, 2019 at 6:30 p.m. with all in favor.

The Following were Ms. Monahan's comments and suggested changes to the Planning Board Proposal:

***§245-41 Criteria for Special Exceptions***

*A. In hearing special exceptions under this chapter, the Board of Adjustment shall take into consideration the following criteria when no specific criteria are provided within the Ordinance.*

Ms. Monahan wrote: This is too doublespeak. Regardless of specific other criteria, most special exceptions should address some guiding basics. I personally do not agree with some of the proposed current special exception criteria that says these 6 criteria will not be applied and intend to vote against them. Therefore, I want to make sure that these Basic 6 Criteria are passed.

In hearing special exceptions under this chapter, the Board of Adjustment in appropriate cases and subject to appropriate conditions, may allow special exceptions to the terms of the ordinance. In addition, several types of special exceptions have their own criteria that must be met. All special exceptions must meet six basic criteria:

1. The use is listed in the ordinance as permitted by Special Exception in ~~the~~ **that Zoning District. *in which it is proposed.***

The Members unanimously agreed not to make this change.

2. The character of the specific site proposed for the use or structure is appropriate because it provides adequate useable space to accommodate the use and avoids disturbance of environmental constraints such as but not limited to wetlands, steep slopes, and flood prone areas.

**The specific site is an appropriate location for the proposed use or structure and avoids or minimizes any environmental disturbances.**

The Members unanimously agreed not to make this change.

3. The proposal is not detrimental, injurious, obnoxious, or offensive to the neighborhood.

Ms. Monahan wrote: This is too strong and can be too widely interpreted.

**The proposal will not adversely affect the adjacent area.**

The Members unanimously agreed to make this change. This motion was made/seconded (Carrara/Zeller) with all in favor.

*4. The proposed use and site design are not detrimental to the aesthetic or visual character of the surrounding neighborhood.*

**The proposal is not** detrimental to the aesthetic or visual character of the surrounding neighborhood.

The Members unanimously agreed not to make this change.

*5. There will be no undue nuisances or serious hazard to pedestrian or vehicular traffic, including the location and design of access ways and off-street parking.*

**Ms. Monahan had no changes here**

*6. Adequate and appropriate infrastructure, utilities and public services are available and/or will be provided to ensure the safe and proper operation of the proposed use or structure.*

Adequate and appropriate infrastructure utilities ~~and public services are available and/or will be provided to ensure~~ for the safe and proper operation of the proposed use or structure.

The Members unanimously agreed not to make this change.

### **Other Business:**

Mr. Throop noted the agenda for March 11 would include Public Hearings on 245-32 Off Street Parking (how to count your parking) and 245-41 Conditions for Appeals and Criteria for Special Exceptions as well as a Public Hearing on Scenic Road Tree Cutting.

The meeting adjourned at 8:05 p.m.

**Next Meeting:** March 11, 2019

Respectfully submitted,

Laura Norton

## Administrative Assistant