

Planning Board

TOWN OF PETERBOROUGH
Tuesday, October 14, 2013 – 7:00 p.m.

Members Present: Jerry Galus, Rich Clark, Ivy Vann, Tom Weeks, Joel Harrington, Audrey Cass, Ivy Vann and Barbara Miller

Staff Present: Peter Throop, Director and Laura Norton, Administrative Assistant, Office of Community Development, Dario Carrara, Code Enforcement Officer and Carol Ogilvie.

The Public Hearing was called to order at 7:00 p.m. with Chair Harrington noting “this is the October 14th regular meeting of the Planning Board and public hearing on deletion of §245-26 *Open Space Residential Development* and replace it with *Innovative Subdivision Design* (and replacing existing references to Open Space Residential Development throughout the zoning ordinance with new references to Innovative Subdivision Design. Add new §245-24.6 *Workforce Housing* and related §245-4 *Definitions*. Delete §245-24 *Home Business, Professional Uses and Customary Home Occupations and Home Industries* and replace with §245-24 *Home-Based Business* and related §245-4 *Definitions*, and Amend §245-30.1 *Enlargement, Change or Replacement of Nonconforming Buildings* to allow for a reasonable increase in height.

Chair Harrington looked up and noted “each amendment will have a separate public hearing then we will go into a Workshop to update the proposed zoning ordinance amendment to §245-10.2 *Business/Industrial District* to add uses and related definitions.”

Chair Harrington then introduced the Board members and appointed alternates Audrey Cass and Jerry Galus “to sit and be voting members this evening.” Chair Harrington then noted Vice Chairman Ivy Vann had recused herself for the first public hearing “but will join us for the other hearings.” Lastly he explained how the evening would proceed. He noted the proposed amendment would be introduced by Mr. Throop after which the Board would accept the proposal for consideration at public hearing. The members would discuss questions and concerns then open the hearing to the public for their questions and concerns. “The public hearing will then be closed and the Board will discuss moving the proposal forward to ballot. I expect we will have votes for the Board tonight.” Chair Harrington concluded by noting “for those with questions or concerns please identify yourself for the record, speak on point to the ordinance and the change being introduced and direct any questions you may have to the Chairman, not each other.”

Chair Harrington read the first proposed amendment and referred to Mr. Throop for its introduction. “Thank you Mr. Chairman” replied Mr. Throop adding “let me begin by introducing Dario Carrara the Code Enforcement Officer and former OCD Director Carol Ogilvie and say they are available to answer questions.”

Mr. Throop told the members and the audience “following the public hearing of September 9th we have made changes to clarify the ordinance as well as address concerns from Mr. Carrara and the Town Attorney.” Mr. Throop briefly went through the changes:

Page 1: Modified the description for the ballot to increase clarity of what the ordinance seeks to accomplish;

Page 2: Added examples and minor changes to definitions to increase clarity;

Page 3: Added examples of uses allowed in the open space;

Page 4: Added a process for requesting an exemption and eliminated exemption (1) (a) (i) because it would be covered under the more general exemption under (iii); Deleted (D) (1) as directed by the Board at the September 9 meeting;

Page 5: Reworded (2) (a) to make it consistent with the waiver section and (3) (a) Tract Dimensions to simplify the language;

Page 6: Modified paragraph (4) to clarify that individual and common septic systems and wells may be located in the Common Land but not the Open Space;

Page 7: Regarding the land use activity density bonus points, “providing open space from 50% to 75% of the total parcel was changed to “up to 5 points or 1 point for every additional 5%.” Mr. Throop noted the previous way the language was written “was not in the spirit of what the Board was looking for in regards to incentive and density points.” He also noted a change in (G) (1) for clarity and deletion of the last line in (G) (2) as it would make remaining lots non-conforming;

Page 8: Modified Open Space Requirements section to improve clarity, including naming customary open space uses allowed subject to best management practices. Also removed paragraph (10) as taxation and assessment are not a part of zoning;

Page 9& 10: Made related definitions and references throughout the zoning ordinance consistent with the proposed ordinance.

“Thank you” said Chair Harrington adding “we went over this many times to make sure it respected the spirit and intent of the Master Plan” and asked for “any questions from the Board?” Mr. Weeks noted a clarification on Page 8 (6) (second sentence) where the comma after *passive* should be removed to read passive non-commercial recreation.

Chair Harrington then opened the hearing to the public noting the 3 or 4 workshops and one public hearing that had been spent on this proposed ordinance. He referred back to Page 1 and the highlighted section of the draft noting “the purpose is to allow flexible subdivision design and to promote the preservation of natural and cultural resources while facilitating the use of sustainable development practices.”

James Walsh introduced himself and asked if the public was notified of the last public hearing (September 9th). Chair Harrington replied all public hearings are noticed in the newspaper a specific amount of time before the hearing date. Mr. Walsh asked “were the residents notified?” as he showed the Chairman a piece of paper (which was the draft ordinance) adding “I got this notice in the mail.”

It was noted that it was unclear as to how Mr. Walsh received the mailing and that it did not come for the Office of Community Development, the department responsible for public notices.

Mr. Walsh told the members he had reviewed the draft and asked about the Land Use Activity – Density Bonus Point schedule. “What are they used for?” he asked.

Chair Harrington replied “it is a common innovative way to give incentive to a developer to perhaps include things into a development that is inclusive and attractive to the town making it a good design, especially in the rural area.” He noted examples such as burying utility lines and using solar or passive energy. “We want you to do that and earn points that will enable you to increase the density of the development.” Mr. Throop added on page 6, paragraph (1) spelled out how the Planning Board may award the density bonus and that “for every point earned, the developer may receive a 1% increase in his density up to a maximum of 25% in dwelling units.”

Mr. Walsh asked “what is the minimum size lot in the Rural District?” Chair Harrington replied “three acres.” Mr. Walsh noted “so if I have 30 acres I can subdivide it into 10 house lots.” “That is correct” replied Chair Harrington. Mr. Throop gave an example of using the Innovative Subdivision Design on the same lot noting “using this ordinance and accruing bonus points you could earn 2.5 more density or 2 more houses as the ordinance rounds down.” Chair Harrington interjected “so we are taking the current rights of the landowner and increasing them by doing good things.” Mr. Throop noted “the difference is *how* those houses are placed on the land. BY reducing the lot size, houses can be placed in such a way as to avoid identified natural and cultural resources on a parcel and leave 50% of the land open. Mr. Walsh was aware of the theory and maintained that the new ordinance, with all its restrictions, reduces a 3-acre lot to a ¾ acre lot.

A brief discussion of back and forth scenarios played out between Mr. Walsh, Mr. Throop and Chair Harrington. With the idea of clustering homes on smaller lots leaving open space for the preservation of natural resources in mind Mr. Walsh asked “can you still do 3-acre subdivisions?” It was noted that a 10-acre lot could indeed be subdivided into three 3-acre lots, but lots with 10 acres or more must follow the new ordinance. Mr. Throop noted “but there are exceptions.” He pointed out Page 4 C. (a) (ii & iii) and read “*subdivisions for which the applicant can demonstrate to the Board’s satisfaction that a conventional design provides greater or equal benefit to the natural and cultural resources*”

Mr. Walsh responded with several other scenarios and what *could* and what *could not* be possible under the current versus the proposed ordinance. Chair Harrington repeatedly noted it was impossible to conclude any one scenario. “There are considerations such as flood plain, steep slope and wetlands that must be addressed. There are so many parameters, we would need to see the characteristics of each property” he said.

Ms. Von Mertens introduced herself and noted “that is no different than the Cranbury Meadow subdivision.” She briefly explained that exemption that would allow the subdivision of large lot with the provision that they would not/could not be further subdivided.” She looked to Mr. Throop noted “that is what I thought you were talking about.” Mr. Walsh seemed to be familiar

with that exemption and noted they were not the same thing “but that is a very good point” he said.

There were several other scenarios with 300-acre lots subdivided into thirty 10-acre lots as well as 100-acre lots subdivided into twenty 5-acre lots, with Mr. Walsh challenging it as a taking of land with Chair Harrington maintaining “probably the current ordinance is more restrictive” as he noted the opportunity through bonus points and other exceptions for *more* density “while creating an equal balance for the community and maintaining the goals of the Master Plan.”

Mr. Throop explained the Conditional Use Permit process, speaking briefly about the minimum lot size or building area square footage not exceeding 25% adding “but lot circumstances are sometimes such that if the applicant can demonstrate a conventional design that provides greater or equal benefit to the natural and cultural resources they will grant a waiver.” Chair Harrington agreed noting “there is not a litmus test percentage test out there” and referred back to the waivers and Conditional Use Permits as a source of relief. “It is based on the circumstances of the lot and it is trying to achieve exactly what the current subdivision ordinance does with an eye towards some of the natural and cultural features of a specific property.” Mr. Walsh replied “again, it is not the number of units. It is the size of them.” Chair Harrington turned to Page 5 of the ordinance and read (2) *Lot and Yard Standards*. “The Board may approve a lot size of building area of 5,000 square feet or less; however the lot size or building area square footage shall not exceed 25% of the required area for a lot in a conventional subdivision.” He looked at Mr. Walsh and asked “are you caught up on the word *lot size*? What are you caught up on? What is your general concern with the ordinance?” Mr. Walsh replied “it appears where previously I could offer larger lots to people to build a house; I can’t under this ordinance so it is diminishing the value of my property significantly.”

Mike Salera introduced himself and noted his concern with the ordinance. He cited Page 4 C. (a) (iii) and asked it be read again. When Mr. Throop was finished re-reading the exemption requirement Mr. Salera told him “to have that discussion it could cost \$25,000.00 to \$30,000.00” adding “you are taking away my rights and how I choose to use my land.” “That is not true” replied Chair Harrington. Mr. Salera responded by noting “you are telling me that is not true but you are not answering my question. You are talking down to me and I resent it. You are taking away the rights to my 100 acres.” Chair Harrington apologized for giving that impression. Mr. Salera then asked “how much town land is already in conservation? How many thousands of acres?” When he was told “25%” he repeated “25% already in conservation” adding “I only have 100 acres. Other land owners do not even know this is happening.” Mr. Walsh interjected “I agree.” Mr. Salera concluded by repeating “you are taking away my rights to my land.” Chair Harrington replied “you have made your point; your point is on the record.” He went on to explain “we (the Planning Board) are charged with implementing the goals of the Master Plan. These charges are from the Master Plan Steering Committee and it is our job to implement it. We (the Planning Board) all own land and homes and care deeply about this town. Chair Harrington then looked up and asked “anything else?”

Ms. Von Mertens recommended clarifying and briefly quoted from the model ordinance from the State Planning Office. Ms. Ogilvie noted caution as the model ordinance differed regarding the

lot size. Ms. Von Mertens maintained the model ordinance tries to accomplish closer units without fragmenting the habitat and not contributing to sprawl.

Maryann Walsh introduced herself and in asking about Page 7 H. (1). She read “for subdivision in the rural district a minimum of 50% of the total tract must be set aside as permanently protected open space.” She asked “can you explain that?” Chair Harrington replied the 50% open space would be a result of smaller lot sizes, held as common land or protected open space. Chair Harrington then reiterated the goals charged by the Master Plan, adding “the goal is to preserve more of the rural area and focus more on infill in town.”

Chair Harrington told the audience “this Board has an excellent relationship with the developers and we work well together. Many times we have waived regulations, there is no straight answer. We provide the incentive and the builder gets rewarded.” Mr. Walsh replied “so basically it is really taking away the land owners rights so I would not agree with that.” The Chair replied “it depends on how you want to use the land.” Mr. Weeks interjected “in my opinion if you come in with large estate lots (more than 10 acres) you would meet the exemption of Page 4 C. (a) (iii).” Mr. Walsh replied “it should be stated that clearly then” adding “you may not be sitting on the Board 5 years from now, it should be stated.” Chair Harrington concluded with “we will take it under consideration. We hear you and try to prepare for future Boards.”

The public hearing closed at 8:00 p.m.

Mr. Clark began with “I understand his point” adding “I have said I don’t like to see the land chopped up into chunks. My thing would be not to make it mandatory, do not require it.” Chair Harrington asked “any other comments?”

Mr. Weeks mentioned the exception for 10-acre lots was consistent with the current exemption of Page 4 C. (a) (iii) and told a brief story about a 300-lot development that was derailed by a town-imposed moratorium on building. He concluded by saying “I think it is a reasonable thing under the Page 4 C. (a) (iii) and does not go against the Master Plan to allow exception for 10-acre lots on private roads, just throwing it out there.”

Chair Harrington reiterated the goal of preserving the rural character of the out-lying areas of town adding “let’s ask Francie, what does the ConCom think about this?” Ms. Von Mertens replied “I would agree with Tom (Weeks). I think he is trying to say let the owner create large lots but I don’t like the term estate lots, let’s call them conservation lots.”

Mr. Clark interjected “if you get rid of the word *require* that would help” with Chair Harrington replying “that is not the solution.” Mr. Throop suggested “subdivisions of 10 acres or more that are accessed by a private road be exempted” adding “this would not be applicable to lots under 10 acres.” Mr. Weeks interjected “isn’t there something about the maximum number of lots accessed by a private road?” It was noted the regulation currently says 20 lots and 10 units. “That needs to be corrected” aid Ms. Ogilvie.

Additional discussion about possible scenarios followed with specific attention to the “second round” of subdivision (where for example a 100 acre lot is subdivided into ten, 10-acre lots and

the landowner returns to further subdivide the 10-acre lot). The members spent some time on this issue and the language of the ordinance with Mr. Throop noting “the Devil is in the details here.” Mr. Clark maintained the language should not include the word *require*. “The purpose of the ordinance is to provide incentives for the developer not forcing them to do something” adding “it should be voluntary, some people will not want to do it, some will.” Ms. Cass referred back to the Master Plan noting “we have a directive. As we follow through on it we can make accommodations along the way for larger land owners. We can create a waiver for large land owners and still stay within the realm of what we have been asked to do, which is for the people who come here, live here and want to stay here.”

Mr. Walsh noted increased density incentives would increase the value of the lots when the decision was voluntary “and not forced to do it, giving up our right as land owners.”

A motion was made/seconded (Clark/Galus) to close the public hearing with all in favor.

Discussion

Chair Harrington began with “I think a lot of work has been done the last 9 months” adding “and there is concern of the effect of subdivision on the rural nature of our town.” He went on to say “what attracts people here is the town center and the rural character of the town that we have.” He looked up and said “I agree with the goal of the Master Plan and I agree it is important to our economy, our citizens and our community.” He noted the ordinance was consistent with other surrounding towns who have similar subdivision ordinances. He noted the spirit and intent of the ordinance had the right balance. “I agree with this and I think it should be added” he said. He concluded by noting “I don’t think the existing ordinance provides enough incentive to create sensitive building.”

A brief discussion about subdivision of lots greater than 10 acres in size accessed by private roads followed with specific attention to §245-26 C(1)(iii) subdivision for which the applicant can demonstrate to the Board’s satisfaction that a conventional design provides greater or equal benefit to the natural and cultural resources.

Mr. Throop noted RSA 674:21 II and the Planning Board’s authority to grant Conditional Use Permits with reasonable conditions *or* to waive any of the requirements of the ordinance if specific circumstances relative to the proposal indicate that the waiver would properly carry out the spirit and intent of the regulations. Chair Harrington suggested finding “a way to carry that over to the exception language.” Mr. Clark interjected “I just think we should lead with a carrot and not with a stick.”

With no further discussion Chair Harrington closed the discussion at 8:30 p.m. He looked up and asked “is the Board ready to vote on this?” The response was unanimously positive.

A motion was made/seconded (Cass/Miller) to approve the proposed ordinance and bring the amendment to ballot with a language change of *any subdivision with proposed lots of 10 acres or greater and is located or has its access gained through a private road is exempt* be sent to Town Ballot with all but Mr. Clark in favor.

At 8:30 p.m. Chair Harrington read the second proposed amendment to add new §245-24.6 *Workforce Housing* and related §245-4 *Definitions*.

Mr. Throop introduced the amendment. He noted the work on the introduction portion of the ordinance and the addition to the confirmation of compliance where the Board will evaluate the town's housing stock on an annual basis to determine compliance with the New Hampshire RSA (RSA 674.58-59 *Workforce Housing*).

There were no other questions from the Board or the public and the public hearing was closed at 8:33 p.m.

A motion was made/seconded (Vann/Weeks) to approve the proposed amendment and move it to Ballot with all in favor.

At 8:36 p.m. Chair Harrington read the third proposed amendment to delete §245-24 *Home Business, Professional Uses and Customary Home Occupations and Home Industries* and replace with §245-24 *Home-Based Business* and related §245-4 *Definitions* and referred to Mr. Throop for its introduction.

Mr. Throop noted this was a replacement ordinance with amended related definitions adding “the purpose of this amendment is to update and reorganize the current ordinance to ensure reasonable opportunity for residents to engage in home-based employment by clarifying activities used by right and amending the process for the uses requiring a permit and hence eliminating the redundancies in the current ordinance.” Mr. Throop then noted definitions for *home daycare* and *commercial vehicle* had been added “and §245-4.32a *Home-Base Business* was added back in after it was inadvertently deleted.

Mr. Throop went on to clarify the Exemptions to the ordinance as well as the definitions of Home Occupations and Professional Services.

With no further discussion the public hearing closed at 8:44 p.m.

A motion was made/seconded (Vann/Weeks) to approve the proposed amendment and move it to Ballot with all in favor.

At 8:45 p.m. Chair Harrington read the last proposed amendment to amend §245-30.1 *Enlargement, Change or Replacement of Nonconforming Buildings* to allow for a reasonable increase in height. He referred to Mr. Throop for its introduction.

Mr. Throop explained that an existing legally non-conforming building or structure (with nonconforming setbacks) may be changed or enlarged as long as they do not further encroach that setback.

Mr. Clark asked they go back to the *Home-Based Business* proposal. He asked “is the public hearing still open?” Although a vote had been taken the members agreed to further discuss Mr.

Clark's concern. Mr. Clark recused himself and went to the audience. He referred to section B. Home Occupations (4) which reads "the home occupation may not occupy more than 25% of the floor area of the building but in no case may it exceed 500 square feet." Mr. Clark noted "500 feet is too small, everything I do is large. I live on 6 acres that are screened." Ms. Vann replied "you would fall under section D. Home Industries which read "no more than one quarter (25%) of the lot area, exclusive of areas covered by buildings, shall be used for the home industry, including outdoor storage or parking."

Mr. Clark asked "so I have 6 acres, I can use 2 acres?" "Yes" replied Ms. Vann. Mr. Clark asked about the definition of trades people with Ms. Vann giving an example of "someone like me, I sell embroidery." Chair Harrington added "also carpenters, plumber and electricians." The discussion that followed included defining occupations and complying with the level of impacts a home business may incur. They also discussed group classes noting there were differences between having a class for fun and having one for profit. Mr. Carrara was asked if there was any distinction in the language between paying customers and non-paying customers. Ms. Vann interjected "otherwise it is just a party." The members also discussed the concept of buying a product versus making a donation.

Ms. Von Mertens noted she had given workshops on different things "and it never occurred to her that it was a home business." Mr. Weeks replied "under this you are a professional instructor."

At 9:00 p.m. a motion was made/seconded (Vann/Weeks) to move Home Daycare to Professional Uses and remove Home Daycare from the A. 1. Exceptions with all in favor. Mr. Clark was recused.

At 9:02 p.m. Chair Harrington re-read the last proposed amendment to amend §245-30.1 *Enlargement, Change or Replacement of Nonconforming Buildings* to allow for a reasonable increase in height. He referred to Mr. Throop for its introduction.

Mr. Throop noted the change in language "so that it simply reads the height of any non-conforming section of the building or structure may not increase."

With no additional discussion the public hearing closed at 9:06 p.m.

Mr. Clark recused himself as a motion was made/seconded (Vann/Galus) to approve the proposal and move it to ballot with all in favor (Mr. Clark recused).

At 9:08 p.m. a Workshop regarding the zoning amendment to §245-10.2 Business/Industrial District to add uses and related definitions.

Mr. Throop re-introduced this amendment with a summary of what had transpired to date. He gave a brief history of the 2005 effort to implement the objectives of the Master Plan as it related to Economic Vitality. This included the consolidation of five zoning districts into three to simplify and streamline zoning as it related to business opportunities in town. He noted that in 2007 three uses were removed from the newly created Business/Industrial district: *Research Laboratories, Office and Personal and Professional Services.*

He reviewed the current proposal and noted that Personal and Professional Uses had been split into two separate categories as “they are different uses”. He also indicated that definitions for all uses in the district had been reviewed and definitions were added or modified to ensure that the uses were adequately defined.

Peter Brown introduced himself and told the members he had talked to much of the business community about what is proposed in the Business/Industrial District. “I took it to Business Support (Peterborough’s Chamber of Commerce) and the EDA (Economic Development Authority). The members continued with a long discussion about including Assisted Living and healthcare related uses in the district. They reviewed the nature of different kinds of health care and whether health care would be considered a professional or specialized service.

Mr. Brown noted he had read the proposal adding “I am fine with it. What is proposed here is adding the four uses back into the District. He went on to note “these are important uses; I understand why you split Personal and Professional Services. I am happy with what is proposed.”

At 9:15 p.m. a motion as made/seconded (Harrington/Vann) to include the aforementioned changes for the public hearing next week (October 21,2013) with all in favor.

A brief discussion about the validity of the *Assisted Living* use in the District followed. “What is the sense of the Board?” asked Ms. Vann adding “should we leave it in or take it out? What do we want to do? The members discussed the components of the Healthcare Facilities use and the definition of long-term residential facilities such as assisted living facilities and nursing homes. Chair Harrington noting “assisted living in this District in not compatible because of the nature of assisted living facilities. I cannot envision that in this District.” Ms. Vann agreed noting “it is residential in nature; my rational is to remove it.”

Code Enforcement Officer Dario Carrara asked the members to be specific. “It is important the Board come to a decision on residential in the Business/Industrial District.” Ms. Vann advocated “let’s just take it out” with Mr. Carrara asking the Board define ‘it.’ Chair Harrington replied “less than 24 hours, anything over 24 hours is residential.” Ms. Vann noted “we can explicitly name medical offices, clinics and medical practitioners or any other entity offering specialized (non-residential) is fine.”

A motion was made/seconded (Vann/Clark) to remove Assisted Living Facilities and add Health Care Facilities except for Assisted Living and Nursing Homes (both are listed in the Health Care Facilities definition) to the permitted uses in the Business/Industrial District with all in favor.

Minutes

A motion was made/seconded (Cass/Galus) to approve the Minutes of September 16, 2013 and September 24, 2013 with all in favor.

Next Meeting

It was noted that the next scheduled Planning Board meeting was November 11th (Veteran’s Day, and a Holiday). The Board briefly discussed meeting the 13th and/or the 18 of November.

Chair Harrington thanked the members “for the opportunity to be your Chair under the most unfortunate circumstances.” He urged the members to “stay together and respect each other.” He noted he would be moving on to a new job “but thank you all” he said. Ms. Miller replied “I just have to say we have accomplished more than ever before since Joel has been here. He has done a great job.” Ms. Vann agreed noting “it has been lovely to accomplish so much in the last six months. I am delighted we had Joel’s leadership in managing to get these proposals to the ballot.”

The meeting adjourned at 9:40 p.m.

Respectfully submitted,

Laura Norton
Administrative Assistant