

PLANNING BOARD

TOWN OF PETERBOROUGH, NH

Minutes of February 22, 2017

Members Present: Chair Ivy Vann, Joe Hanlon, Rich Clark, Jerry Galus, and Ed Juengst

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

Chair Vann called the meeting to order at 6:30 p.m. with introductions.

Public Hearings on Applications:

“We have two applications tonight” said Chair Vann as she read the first case.

“A request for a **Two-Lot Subdivision and Conditional Use Permit** of a .82-acre parcel in the General Residence Zoning District, Parcel No. U017-151-000, located at 44 and 46 Concord Street. The existing parcel contains a former single family home that was most recently used as office space for the River Center and a second detached building that was most recently used as office and light industrial space.

The applicant intends to demolish the River Center building and the rear portion of the second detached building and convert the remainder of the second detached building into a small single family home that will sit on a new 5000 square foot parcel created using the Traditional Neighborhood Overlay District Ordinance. The remainder of Parcel No. U017-151-000 will be merged with the abutting property to the north, Parcel No. U016-027-000 at 52 Concord Street. The resulting lot will be approximately 1.4 acres and will include Reynolds Hall and associated parking. A waiver has been requested for Section 245-15.3.E.7 “Parking and Driveways” with regard to locating the driveway and parking area within the setback.”

A motion was made/seconded (Galus/Clark) to accept the application as substantially complete with all in favor.

Before continuing Chair Vann noted the application before the Board was for a subdivision.

“The possible loss of a building is not part of this discussion tonight” she said. She assured the members and audience that a full Site Plan Review would take place for any plans for the former River Center site. She then introduced John Catlin, representative for the applicant, the Episcopal Church of New Hampshire, (All Saint’s Church). Mr. Catlin thanked Chair Vann and told the Board he was an Architect from Keene, New Hampshire. “We have been assisting the church in the purchase of the River Center Site which we have used over the years as a parking lot. When it came up for sale, we purchased it, but money is a limiting factor for the church.” Mr. Catlin told the Board the buildings had been on the market for a little less than a year and the church had wrestled with what they may do with the buildings. “We are here for the long term, we’ve been around 100 years and hope to be around several hundred more” he said. He reported they had received an offer on the accessory building at #44 Concord Street. He pointed out this building, the former River Center building and Reynolds Hall all in a line. He noted that under

the TND I the church had the opportunity to subdivide the #44 from #46 Concord and create a new single family home where the former MAPS Office had been located. "This is an opportunity to bring in some money for the church and put a house back on the tax rolls" he said.

Mr. Catlin proceeded by noting the intent was to subdivide #44 and #46 Concord and merge the larger lot (the former River Center) with the Reynold's Hall lot. He noted an already existing drive-through connection between the two lots that has been used for snow plowing and removal.

A discussion and review of the minimum requirements for using the TND I for issuance of a Conditional Use Permit including *town water and sewer, re-use of existing buildings, lot and yard standards, setback requirements, building design lot coverage and parking and driveways* followed.

It was noted the asphalt in front of #44 Concord Street would be removed, parking would be in the back or on the side of the building (may be tandem in nature). The re-use of the former MAPS Office was calculated to be 760 square feet (15% lot coverage of the 5012 Square-foot lot) and demolition of the back section of this small building would avoid nonconforming setbacks. Mr. Galus clarified "so the pavement would be removed and it would be re-sodded?" "Yes" replied another member adding "and it does not have to sod, it just cannot be gravel." Chair Vann asked "how wide is the residential driveway?" Mr. Catlin replied "24 feet" with Chair Vann saying "that is big." Mr. Catlin noted "we may be able to get it down to 18 feet" with Chair Vann replying "that is still big."

Mr. Throop noted that in granting a Conditional Use Permit, the ordinance authorizes the Board to attach conditions of approval and waive or modify any of the requirements of the ordinance. He noted two waiver requests with this application (one for parking in the setback and one for the driveway in the setback).

Chair Vann noted the asphalt in the front of #44 Concord Street would be removed and the demolition of the rear portion of the building would be completed *prior* to signing of the plan. "This is fairly straight-forward" she said adding "and the applicant must come back to us for any Site Plan Review, that is a condition."

With no further discussion and no comment or concerns from the audience Chair Vann asked for a Condition of Finding.

A motion was made/seconded (Galus/Hanlon) that the conditions for granting a Conditional Use Permit have been satisfied and the submitted proposal is compatible with the existing neighborhood character with all but Chair Vann (who abstained) in favor.

A motion was made/seconded (Hanlon/Galus) to approve the waivers for parking and a driveway in the setback with all in favor.

A motion was made/seconded (Galus/Hanlon) to approve the request for a Two-Lot Subdivision and Conditional Use Permit of a .82-acre parcel in the General Residence Zoning District, Parcel No. U017-151-000, located at #44 and #46 Concord Street, and to merge the remainder of Parcel U017-151-000 with the abutting Parcel No. U016-027-000 at 52 Concord Street, subject to the following conditions:

1. The applicant must come back to the Planning Board within a reasonable timeframe for site plan approval of the parking lot reconfiguration on the newly merged lot.
2. The asphalt in front of #44 Concord Street shall be removed and restored with appropriate landscaping materials prior to signing of the plan, with curbing along the sidewalk to be addressed during site plan review of the newly merged lot.
3. Demolition of the rear portion of the building on the newly created lot to eliminate encroachments into the setbacks, prior to the signing of the plan.

With all in favor.

Chair Vann moved on to the second application:

“A request for a **Two lot Subdivision** of a 79.5-acre parcel in the Rural Zoning District, Parcel No. R011-005-000, located at the end of Hadley Road. The existing parcel currently contains an existing single family home which will be included on a 12-acre lot. The subdivision will require the extension of Hadley Road as a private road which is not intended to be immediately constructed. As such, the remainder lot of 67.5 acres will be designated as a non-buildable lot until such time as the road extension is designed, constructed and approved by the Department of Public Works. The applicant has requested a waiver of Subdivision regulations as follows: a) To permit the extension of Hadley Road, a dead-end road, to a length that exceeds the maximum 1000 foot standard set forth in Appendix A Section B (3);

A motion was made/seconded (Galus/Clark) to accept the application as substantially complete with all in favor.

Phil Runyon introduced himself as the representative for the Peterborough Players. He also introduced Keith Stevens (Managing Director) and Peter Tibbetts (VP, Board of Trustees). Mr. Runyon pointed to Hadley Road and the 80-acre parcel where they would like to subdivide a 12-acre parcel that currently includes a single family home. “They would like to recover some of their investment by selling that parcel and retain the remaining 67.5 acres.” He went on to say “the issue is frontage for the lots.”

Pointing out Hadley Road was a Class V Road, Mr. Runyon requested the extension of the road as a private road (which extends 770 feet off of Middle Hancock Road) an additional 440 feet into a hammerhead turnaround “which will provide conforming frontages for the two lots” (370 feet of frontage for the new lot and 239 feet of frontage for the remaining lot). He told the members the extension would remain a private road and would be designed to match the existing road in width and material. He also noted the extension would not provide frontage for more than one additional house site without further extension, and that any further extension would require connecting to another Class V Road or a loop back to Hadley Road. Mr. Runyon went on to note the extension will have a conforming 50-foot Right-of-Way for use by Town Plow trucks. Mr. Runyon concluded by telling the members that as a result of this request one of the existing outbuildings would straddle the boundary line between the new lots and the other outbuilding will be partially located within the building setback. He said that would be removed.

Chair Vann interjected “you will need a waiver for a dead-end road to be longer than it can legally be.” A brief discussion about the request followed before Chair Vann opened the hearing up to the public. With no public questions or concerns, Chair Vann closed the public hearing.

The members discussed the waiver and conditions. It was noted the applicant, for conditional approval and before signature of the plan was willing to remove both the existing outbuildings.

A motion was made/seconded (Hanlon/Galus) to approve the request for a waiver of Planning Board Subdivision Regulations Appendix A, Section B(3) “Dead-end Streets” to allow for a private road extension of Hadley Road, which is already in excess of the 1000 foot maximum length, with all in favor but Mr. Clark.

When asked about his concerns Mr. Clark replied “I have a concern we may be setting a precedent” adding “I just don’t see it, I think they should build out the road to town specs, everyone else would have to, what about the next guy who comes along?” Mr. Runyon interjected “this is strictly an economic issue” with Mr. Clark replying “I understand but I don’t agree with it.”

After additional discussion, a motion was made/seconded (Galus/Hanlon) to approve the request for a Two Lot Subdivision of a 79.5-acre parcel in the Rural Zoning District, Parcel No. R011-005-000, located at the end of Hadley Road as shown on a subdivision plat entitled “Subdivision Plan of Land , Lot R011-005-000, Peterborough Players, Inc, Peterborough, New Hampshire, Scale of 1” - 200’ dated January 3, 2017” prepared by Monadnock Survey, with the following conditions:

1. Both existing outbuildings on the newly created lot R011-005-001 to be removed prior to signature of the plan;
2. A “Notice of Non-Buildable Lot” to be drafted by the Town, signed by the applicant and recorded concurrently with the approved subdivision plat at the Hillsborough County Registry of Deeds;
3. An access easement for the benefit of the Town across a portion of the private road extension Hadley Road as shown and noted on the plan, to be prepared by the applicant, (subject to approval by the Public Works Director and Town Attorney), signed by the applicant, and recorded concurrently with approved subdivision plat at the Hillsborough County Registry of Deeds;
4. Neighborhood Association Documentation for the private road extension of Hadley Road to be prepared by the applicant (subject to approval by the Town Attorney) and a note to be added to the plan referencing the Association Documentation, prior to signature of the plan.

With all in favor but Mr. Clark.

Minutes:

A motion was made/seconded (Galus/Jeungst) to approve the Minutes of February 6, 2017 as written with all in favor.

Public Hearing: Traditional Neighborhood Overlay Zone II (TND II)

“This is the third Public Hearing for this new piece of zoning” said Chair Vann adding “the purpose of the proposal is to add a new section *Traditional Neighborhood Overlay Zone II* in order to increase opportunities in town for smaller houses on smaller lots.”

Chair Vann gave a brief history of how the draft ordinance grew out of the receipt of an MTAG Grant from Plan New Hampshire (awarding funds to assist New Hampshire communities that want to create or change their zoning regulations to support housing options and increase opportunities for additional housing types and styles in town), the creation of a Steering Committee and the extensive public outreach since last Spring.

Chair Vann explained this overlay district would allow village and neighborhood type developments in appropriate areas, not a particular place. “It is clear there are places all over town that could accept more density” she said adding the criteria of town water and sewer or the capability to extend to it. “That was the goal” she said. Chair Vann then explained she intended to review the draft and the changes that had been made since the last Public Hearing. She told the members the various purposes of the ordinance were listed in an order of priority. She noted these criteria included opportunities for changing household demographics, creating smaller lots for small (more efficient and more affordable) housing, discouraging extensive development in the Rural Districts, locating density closer to Police, Fire and Emergency Services (while) making more efficient use of the town’s existing infrastructure of water and sewer systems, maintaining neighborhood scale and character and historic development patterns as they exist in the Downtown and (hopefully) enabling residents to become less automobile dependent.

Joann Carr introduced herself and asked where on the Town website the draft was located. Chair Vann told her it should be accessible from the front page with Ms. Carr replying she had been unable to find it.

A projected graphic and brief review of TND I was discussed with Chair Vann outlining the neighborhood streets (Concord, Main, High, Union, Elm and Evans) that fell within the Magenta outline of the district. “It is basically the Downtown core and outward” she said. She told the members the Ordinance was adopted by the Town three years ago and had been used for development once. From the audience Paula Fox asked if the All Saint’s Church application (heard at the beginning of the meeting) was the second application approved to subdivide using a Conditional Use Permit via this Ordinance with Chair Vann confirming it was.

Chair Vann noted the permitted uses included residential uses of single-family, two-family and multi-family (to a maximum of ten dwelling units). Non-residential uses including personal and professional services and retail (intended to serve the neighborhood) could be approved as accessory uses to the residential use by Conditional Use Permit. Chair Vann emphasized all non-residential uses were subject to Site Plan Review requirements and that the Planning Board would not permit a non-residential use that presented the potential of undesirable traffic, noise, light or other impacts to the residential dwellings. “Things like an auto body or auto repair shop would be prohibited” she said. She also briefly reviewed the three levels of Home Occupation permits the town requires (two of which, *Professional Uses and Home Industries* require a Conditional Use Permit from the Planning Board.

From the audience Cathy Lanigan introduced herself and confirmed “so this encourages mostly residential with some small non-residential uses of a neighborhood scale.” “Correct” replied Chair Vann. Steve Graves introduced himself and complimented the members on their good work. He asked “is this on a case by case basis?” Chair Vann replied “yes, but remember single and two- family lot subdivisions are by right.” She then briefly reviewed the minimum standards of *water and sewer, lot and yard standards, stormwater management, building design and parking and driveways*. “These all apply to everyone” she said.

Moving on to a review of the ordinance’s *Procedure* Chair Vann reiterated single and two-family dwellings and two-lot subdivisions were permitted by right, subject to the provisions of the ordinance except for Paragraph E. (4) (b) which states the height, scale and massing of the building, the sizing, orientation and spacing of doors and windows, and the shape and orientation of the rooflines shall reflect other existing residences within 300 feet of the property in both directions on both sides of the street, as measured along the adjacent street frontage from the lot proposed for development. Should there be no residential buildings within the 300 feet, traditional Peterborough forms shall be used.

Chair Vann once again reiterated “a Conditional Use Permit is necessary for anything more than one or two units and a Conceptual or Design Review as well as Site Plan Review would be required.”

Referencing to *Procedure* Mr. Galus asked “was that created to exempt single and two- family dwelling?” Chair Vann replied “there are really two reasons, single and two-family dwellings do not require those building designs now and we did not feel it was fair for staff to decide if the dwelling met the architectural standard.”

Mr. Graves interjected “I support this, we own two properties in the Downtown.” He went on to caution the members “just be careful to have steps in place to assure no explosive growth.” Chair Vann replied “it is easy to do the better thing and make smaller lots in town. The Steering Committee felt quite strongly about this, and by allowing ones and twos by right, it is the hope we will get more of them.”

Mr. Throop mentioned a single-family home could also have an Accessory Dwelling Unit (ADUs) on the lot. Andrea Cadwell interjected “that encourages building where there is already building so we are conserving resources in areas yet to be built on.”

From the audience Ms. Carr said “I appreciate all the work that has been done, especially since the last meeting.” She went on to say “but it has been difficult to find and review the information on the website.” She also suggested inserting a link to the public notices and draft ordinance on all postings would be helpful. “I appreciate the sentiment of preventing urban sprawl but this reaches pretty extensively into our gateways. Allowing higher and denser development on the fringes and outer edges of town with larger parcels is not necessarily creating a walkable community.”

Mr. Carr mentioned the Long Hill Estates Community on Route 202 South. “That is a very nice community but it is not walkable” she said as she went on to encourage the consideration of putting an urban growth boundary on the ordinance and focus on a tighter core than this ordinance proposes. Ms. Carr cautioned allowing the extension of town water and sewer may not

be as cost prohibitive to a developer as they may think. She also noted the important aquifers in the south part of town and said “I feel strongly this is not wise. She concluded by suggesting they draw a circle to set a limit (“Phase I if you will”) for the TND II.

“I hear your concerns” replied Chair Vann adding “we initially considered specific places and then decided against it.” Steering Committee member Sue Chollet introduced herself and gave examples of how other towns have tried similar ordinances. “With lots of hoops to jump through developers and builders got discouraged and nothing has happened” she said. Ms. Chollet also told the members since she had been involved with the ordinance “it has been very loud and clear that people want housing choices we currently do *not* have.” She went on to tell the members developers and builders were not sweeping into town with all sorts of huge plans. “If we run into a problem we can close it down” she said adding “the important thing here is to get more housing choices, more rentals that are less expensive so we do not end up losing businesses.”

Mr. Juengst told the members he’d had a number of concerns about the ordinance “most of which have been addressed” but added “hearing Joann (Carr) speak I think this may be too broad, too unrestricted.” He went on to say he thought an urban growth boundary was a good idea. “I am concerned about that” he said.

Chair Vann noted she did not disagree with the concern expressed by Ms. Carr “but considering the demographics of Peterborough and all of New England for that matter you don’t see a giant press for growth. We have not seen a lot of Building Permits over the last ten years.” Chair Vann went on to say “it is easy for us as humans to imagine all the terrible things that could be caused by an alteration but we are less good about thinking of the bad things that can happen if we do nothing. I feel pretty comfortable with this. I don’t fear rapid growth. I am concerned with smart growth”

A brief discussion about the affordability issue followed. “If the intent of this ordinance is affordable housing, I don’t see that” said Ms. Carr. “The one development created via this ordinance is a good example” she said adding “it is pie in the sky to think we will get affordable housing.” Chair Vann acknowledged this concern and noted “it will be the multiple units in a single building, that is one hope, and it is a huge concern.”

Mr. Graves asked “this is the third public hearing on this?” “Yes” replied Chair Vann. Mr. Graves then addressed the members noting “you can draw the lines a hundred times and someone will take issue. If this is a case by case decision of what is allowed and how growth will happen, I trust you. It is time for the town to grow in a responsible way and we look to you to lead us.”

“Thank you” replied Chair Vann. She then told the members Mr. Throop had several comments regarding TND II that may constitute substantive changes (“a term of art” she said) in the ordinance. She went on to say “if the Board agrees with these changes we will need a fourth public hearing, if the Board is OK with the current draft we will move it to Ballot and it will be voted on at Town Meeting.”

Mr. Throop began with “let me preface this by saying most of my comments are in the spirit of making this ordinance as clear as it can be” adding “some of the language in the draft is stated

vaguely rather than explicitly. Some of the language appears to be inconsistent with statements that were made and changes that were requested during the last week's workshop. It is up to you to decide, if you don't want to make the changes. The other side of this however is that we have a chance to get this right now and make it as clear as possible. That will go a long way when you are asked questions concerning *how* you make decisions and with how applicants are supposed to interpret the language."

Mr. Throop passed out a draft with all the proposed changes highlighted and annotated in the sidebar. He told the members anything in his sidebar highlighted in yellow could be considered a substantive change and if they agreed to adopt the changes, a fourth Public Hearing would be required.

Mr. Throop went through each of the suggested changes in turn and the Board briefly discussed each one. The Board decided to adopt several of those changes that were not considered substantive and decided not to adopt any of the changes that could be considered substantive.

Chair Vann noted she was not inclined to make additional changes at this point. "We can tweak (the language) when we come back to this next year or the year after. Ultimately the goal is to realign all the zoning. This is not our last trip to the grocery store" said Chair Vann.

With no further discussion, a motion was made/seconded (Galus/Hanlon) to move the Traditional Neighborhood Overlay Zone II to Ballot with all in favor.

Planning Board Workshop on Zoning Ordinances:

Chair Vann noted the discussion regarded two ordinances that had passed last year. The first being Accessory Dwelling Units (ADUs) and the second being Bed & Breakfasts (B&Bs).

ADUs: "This had been bothering me since it passed last year" said Chair Vann.

Referring to 245-24.1 Accessory Dwelling Units (ADUs) and the elimination of the requirement set forth in Paragraph C relating to owner occupancy. "The owner shall occupy either the principal dwelling unit or the accessory dwelling unit as their principal place of residence."

"I think we should strike the owner occupancy" said Chair Vann adding "it seems unfair to me." A brief discussion followed (some members feeling owner-occupation is better and others feeling the requirement was overrated). Mr. Hanlon interjected "I am not married to it" with Chair Vann adding "it is an unfair burden." She reminded the members this ordinance was driven by a new state statute where owner occupancy (especially in college towns such as Plymouth, Keene and Durham) had a specific dwelling target. "Not all towns are driven by the same thing" she said adding "but you can decide. This is not a ditch I am going to die in tonight."

Code Enforcement Office Dario Carrara told the members *Section C ii* (stating the property owner submit a signed and notarized "memorandum of adequate notice" to him and recorded at the Registry of Deeds, that identifies the property on which the accessory dwelling unit is located by source deed (and) serves as a notice to any successor owner that an ADU is subject to the provisions of that section of the ordinance) was a little more complicated than he liked.

"Especially the Registry thing" he said.

After additional discussion the members ultimately decided to remove *Section Cii* and make a decision on whether or not to move this ordinance amendment to ballot after the public hearing.

Definition for Bed & Breakfast Establishment:

Chair Vann specified the need for clarification of the definition so that single-family homes offering fewer than three bedrooms for overnight accommodations would be excluded from the definition. "The effect of the amendment is to exempt single-family homes offering one or two-bedrooms available for overnight accommodation from the requirement of obtaining a Conditional Use Permit" she said. She went on to note the State of New Hampshire had created a statute requiring anyone renting on a short term basis, one room or forty must pay a room and meals tax, displaying their tax identification on all their advertising."

The members briefly discussed whether safety inspections should be required when offering even one room for a short term rental. Chair Vann interjected "you can do that or treat them like those who have a roommate." Mr. Galus interjected "we don't want to get in the middle of that" with Mr. Juengst adding "I agree." Mr. Throop told the members the idea of voluntary inspections came from the Fire Chief.

Chair Vann told asked the members if they thought creating a new definition for *Tourist Home Establishment* for one and two-room rentals was a good idea, (keeping Bed and Breakfasts defined with at least three but not more than twelve rooms to rent with a morning meal). She went on to read the proposed definition and said "this would define the existence of an existing thing." A brief discussion about safety inspection conditions, whether to leave them voluntary or not and actually abandoning the whole idea of the amendment followed. Mr. Clark offered "this is a rule against people already doing it. I would prefer not to create a category of illegality."

The members discussed inviting the Fire Chief to their next meeting to explain to them what is involved from his perspective before they make any change. Mr. Hanlon interjected "I suggest we leave them alone, just walk away from it." The other members agreed and discussion was concluded with no action taken to amend the definition.

Chair Vann then opened the Workshop to the public.

Paula Fox introduced herself as a local B&B Owner. She told the members "if you Google Air B&Bs you will get 152 listing of them in this area." She went on to say "and very few fit the description, the vast majority of them are renting entire houses." She also asked the member "how does a 2-room B&B fit in with the Town's Home Occupation permitting? How does it compare with those?"

Mrs. Fox's husband, Rob Fox, introduced himself and noted the concept of safety. "Having a roommate who knows the house and how to get out is not the same as renting a third floor bedroom to a stranger" he said adding "and home insurance does not cover home B&Bs."

Mr. Fox went on to explain how Air B&Bs have affected affordable housing in the town and the state. He noted people were taking their apartments off the rental market and making them Air B&Bs. "By allowing them you are reducing the possibility of making housing affordable" he said.

The meeting adjourned at 9:05 p.m.

Respectfully submitted,

Laura Norton
Administrative Assistant