

PLANNING BOARD WORKSHOP
TOWN OF PETERBOROUGH, New Hampshire

Minutes of August 17, 2015

Members Present: Ivy Vann, Tom Weeks, Jerry Galus, Joe Hanlon, Ed Juengst, Alan Zeller, Matt Waitkins, Bob Holt and Rich Clark. Sharon Monahan, Vice Chairman of the ZBA was also in attendance.

Staff Present: Peter Throop, Director, and Laura Norton, Administrative Assistant, Office of Community Development and Town Attorney John Ratigan.

Chair Vann called the Workshop to order at 6:30 p.m. introduced the members and noted “this is a workshop, it is open to the public but it is for our benefit.” She went on to note the first item on the agenda was Approval of the Minutes.

Minutes:

A motion was made/seconded (Zeller/Clark) to approve the Minutes of August 10, 2015 as written with all in favor.

Chair Vann told members the agenda includes a discussion of the Shoreland Conservation Overlay District and a request for a recommendation of land donations to the town per 41:14-a. She noted that she wanted to change the order of business saying “it makes more sense to discuss the Shoreland Ordinance first (and then the land donations) “so those who are not a part of the donations don’t have to sit through it.”

She indicated that although the entire Zoning Board of Adjustment had been invited to participate in the workshop they opted to send Vice Chairman Sharon Monahan to discuss the proposed revision to the Shoreland Conservation Zone. She went on to remind the members that the focus of the proposal was to modify zoning ordinance section 245-12 from a Special Exception granted by the Zone Board for certain uses to a Conditional Use Permit that would be granted by the Planning Board. “In essence we want to do the same thing we did for the Wetland Protection Zone” she said.

Workshop Discussion:

Shoreland Conservation Overlay Zone:

Mr. Throop began by noting “the only proposed change to RSA 245-12 is to shift the ordinance from requiring a Special Exception from the ZBA to a Conditional

Use Permit from the Planning Board. He noted currently shoreland crossings (including streets, roads, access ways and driveways, including stormwater management systems directly related there to, utility rights of way or easements) and other uses are permitted by special exception to subject criteria set forth in this section of the ordinance. He then reviewed the criteria defined in the current Shoreland ordinance. Looking up he said “we are proposing to transition this from a Special Exception to a Conditional Use Permit using the same criteria.” He referred to a recent applicant who was forced to get a Special Exception for a stream crossing (for the shoreland) from the ZBA *and* a Conditional Use Permit from the Planning Board because it was also a jurisdictional wetland for the same crossing. “Is it fair to make an applicant go to both boards for the same crossing? Our intent is to streamline the process while also ensuring that adequate protections remain in place.” he said. Ms. Monahan noted the Shoreland Water quality Protection Act (SWQPA) was in effect and there was a strong feeling that since the shoreland was already protected it could be kept separate from the wetlands ordinance.

Mr. Throop projected a USGS map for review. “Any water body shown on this map is covered under the Town’s Shoreland Conservation ordinance” he said. Mr. Weeks interjected “there are two maps that apply, the 1953 and the 1987.” Mr. Throop added “the Nubanusit and Contoocook Rivers as fourth order streams as well as any water body 10 acres or greater are subject to the State SWQPA and development within the buffers associated with these shorelands would also need approval from DES.” He pointed out “there are extensive shoreland areas in the Town of Peterborough that are subject to the Town ordinance but are not subject to the State rules.”

A brief discussion about the Special Exception criteria followed. Mr. Weeks noted the Zoning Board tended to consider general criteria (i.e. lighting as an example) when that criteria was not germane to the case. “Lighting is not germane to shoreland crossings” he said.

Ms. Monahan noted the ZBA had revised their application form and considered the general criteria as well as criteria specific to specific requests. Mr. Weeks maintained the Board should be using the general criteria only where it is applicable “and if an ordinance includes specific criteria, then use the specific criteria” he said adding “it makes sense that the language of 245-41 D is *not* a one-size-fits all.” A brief discussion regarding this section of the zoning ordinance followed with input from Town Attorney John Ratigan.

Citing the Wetlands ordinance Chair Vann asked “is there any reason legally why it is *not* better for the applicant to apply for a Conditional Use Permit rather than going to the ZBA first?” Attorney Ratigan replied “no, these are just policy choices, there is no legal barrier.” He went on to note “in New Hampshire the world is moving toward Conditional Use Permits to provide more ease and more of the one-stop shop mentality. There is a recognition that the Special Exception process is too expensive and too long. There is no reason why the Planning Board is not competent to grant this relief and they typically have a better grasp of the big picture.” Attorney Ratigan added that conditional use permits also give the planning board additional leverage as the plan is reviewed “to getting more of what you want, while still protecting the resources.”

Mr. Waitkins interjected that in his experience (he is a former ZBA Chairman) “impacting wetland and shoreland protection is always uncomfortable.” Chair Vann interjected “this would streamline the process.” She added that when an applicant goes to the ZBA for a Special Exception for a crossing, the project is already sited and engineered. “It is placed in space” she said, which makes it difficult for the Planning Board to ask an applicant to change the site design to address other planning issues. “We have seen it more than once” she said, “and then the applicant may have to go back to the ZBA.”

Attorney Ratigan agreed that this gives the Planning Board a chance to look at the bigger plan or the whole picture is disrupted. “Not to take away from the hard work of the ZBA, but this is a planning issue” he said. Mr. Waitkins noted “in my experience it is best to listen to the Conservation Commission for the best location (for a crossing).” Ms. Monahan replied “we (the ZBA) do that now.” Mr. Throop indicated that “the Planning Board does that now with the Conditional Use Permit for the Wetlands Protection ordinance and the proposed amendment to the Shoreland Conservation Ordinance would continue the practice.”

A brief discussion about housing, mixed use and density issues going before the ZBA without having the planning context followed with Attorney Ratigan noting transitioning from Special Exceptions to Conditional Use Permits “allows the Planning Board to plan leaving the ZBA to considering Variances and Appeals from Administrative Decisions.” Mr. Throop added “at times applicants will proposed activities in the wetland or shoreland buffer that will require a variance and that certainly belongs with the ZBA.”

Ms. Monahan had prepared a statement for the Workshop that had been distributed via email to the members. She read the statement with pauses for discussion throughout the evening. The statement acknowledged the Zoning Board of Adjustment would not endorse or support any revisions to the Shoreland Conservations Zone to be implanted as a Conditional Use Permit under RSA 674:21 II.

Ms. Monahan (a wetland scientist herself) respectfully disagreed with the proposal saying “I have not seen this in my experience. I have not been involved with another town using Conditional Use Permits for shoreland crossings.”

Ms. Monahan went on to note most of the properties in the shoreland protection zone have already been developed “so primary concerns are non-measurable, non-environmental consequences to the abutter, neighborhood, views, screening, privacy, noise, density, lighting, real estate values, aesthetics, heights and obstruction of views. “These are typical considerations of the ZBA through Special Exception, not Performance Standards under Site Review” she said. The discussion shifted to whether general special exception criteria should be applied when specific criteria is provided. Mr. Throop read the language in Section 245-41 D “Special Exception Criteria” which states “the following shall be the basis for decisions on special exceptions, except as may be more specifically provided elsewhere in this Chapter.” Attorney Ratigan agreed, indicating that “when specific criteria is provided elsewhere in an ordinance, it supersedes the general criteria.”

Ms. Monahan went on to note the due process procedure and its citizen friendliness versus the appeals process of a Conditional Use Permit. She explained the appeal process before revising Section 245-12 and noted that an appeal of a conditional use permit would be in Superior Court. The members discussed the specifics of the appeal process and its time limitations. Attorney Ratigan responded that “for all practical purposes the appeal of a ZBA decision is going to end up in Superior court” adding “97 percent of requests for rehearings are denied and even if accepted, it is pretty rare that a ZBA will over-turn its own decision.”

Ms. Monahan went on to describe the surface waters falling under RSA 483-B (SWQPA) and the extensive site plan review done by the Department of Environmental Services (DES) for all activities within 250 feet of the shoreland. A brief discussion followed about how much of the town is subject to the state RSA and included references to USGS mapping, wetland functions and values and the

recent amendment of Article IX. Chair Vann interjected “483-B applies regardless of what Board you go to.”

Ms. Monahan continued by expressing concerns about revising the ordinance to allow for more flexibility. She looked up and said “this is *not* the zone to do that in.” She gave several examples of the ordinance’s protections. Ms. Monahan went on to provide information about the stricter rules, requirements and protections through SWQPA. Chair Vann indicated that the proposal in no way sought to allow more flexibility or change the standards that are currently in place.

Chair Vann thanked Ms. Monahan for attending. “We appreciate your thoughts” she said. Attorney Ratigan complimented the Board on their good work, particularly the Agricultural Amendment that passed at Town Meeting this May.

Attorney Ratigan noted the Boards generally seem to worked well together. Mr. Waitkins reiterated the confusion that often sets in with the criteria and Mr. Weeks reiterated the importance of “staying with what is germane to the application.”

In closing Mr. Ratigan explained requests for rehearing as well as re-notification processes. “Stick to your standards” he said adding “even if some seem discretionary, stick to them, approve or disapprove on those bases and you will be fine.”

After a brief discussion, a motion was made/seconded (Vann/Weeks) to move forward with the change to Section 245-12 from a Special Exception approval by the ZBA to a Conditional Use Permit from the Planning Board with all in favor.

Mr. Hanlon asked about any ongoing public struggles with this issue. Chair Vann relying “it will be ongoing.” A brief discussion of public concerns about the proposal followed. Mr. Throop noted the importance of “using the gray box above the amendment language to describe in layman’s term what the proposal intends”, adding “the public needs to understand that they will not have their protections diminished.”

Open Space Residential Development

This item was shown on the agenda, but was not discussed.

Recommendation to Select Board regarding Donations of Land:

Pursuant to RSA 41:14-a the Planning Board is required to make a recommendation to the Board of Selectmen relating to the merits of accepting two donations of land. The first donation is from Joanne Fields. It is 0.78 acre (Parcel No. R003-031-000. The second donation is from Peter Bross. It is 3.35 acres (Parcel No. R003-034-000).

Mr. Throop projected the two parcels for review. One member asked “are they split by the river?” with Chair Vann replying “no they are both on the north side.” Mr. Throop pointed out that both properties are substantially within the 100 year flood zone and both also have significant areas that are within the 100 foot Shoreland Conservation buffer. Pointing out the property setbacks for each of the two parcels, Mr. Weeks noted “when you get all done, there is hardly anything left.” Mr. Juengst asked if the properties were developable with both Mr. Weeks and Chair Vann simultaneously replying “not without a Variance.” Mr. Clarke asked about tax revenue from the lots (\$1210.00 a year for the larger lot, \$1005.00 a year for the smaller one). Mr. Juengst pointed out that if the recommendation to the Board of Selectmen was not made and the town did not accept the lots they could end up being taken by lien for failure to pay taxes.

Mr. Throop reported an informal conversation with a Conservation Commission member who commented that the parcels have good conservation values because of the shoreline and the wildlife habitat along the river. Mr. Clark asked “can you go fishing?” When the answer was *yes* Mr. Clark quickly replied “take it!”

A motion was made/seconded (Vann/Weeks) to recommend the town accept the two donations of land “for the use of the people of Peterborough.” It was noted the Board of Selectmen would have two public hearings before making a decision. All were in favor.

Other Business:

None

Reports from Other Committees:

Mr. Throop gave a brief update on the ZBA. “They approved the final Variance for the Library” he said adding “and the Catholic Diocese of Manchester received a Variance for a reduced side setback for a garage on the property.” He went on to note the EDA had a meeting scheduled for the next day to review and approve their Mission and Vision Statement. Regarding broadband services, he reported the Committee had met with Comcast, Fairpoint and Wy Valley adding “we still have

186 Communications on the 24th at 7:30 a.m. (affiliated with FastRoads) and perhaps one other company to hear from.”

In closing Chair Vann announced what she referred to as a Public Service Announcement. She reminded the members of *Raising New Hampshire* (a state wide building and development conference with national speakers discussing how development affects every part of life). That conference is September 26, 2015 from 8:00 a.m. to 4:30 p.m. and she encouraged everyone to attend.

Next Meeting:

September 14, 2015 at 6:30 p.m.

The meeting adjourned at 7:55 p.m.

Respectfully submitted,

Laura Norton
Administrative Assistant