

MINUTES
ZONING BOARD OF ADJUSTMENT
TOWN OF PETERBOROUGH
Monday, February 4, 2019 – 7:00 p.m.
Peterborough, New Hampshire

Present: Dario Carrara, Seth Chatfield, Sharon Monahan, Peggy Leedberg, Peter LaRoche, Loretta Laurenitis and Matt Waitkins.

Also Present: Tim Herlihy, Code Officer and Laura Norton, Office of Community Development.

Chair Carrara called the workshop to order at 7:00 p.m. “Thanks for coming” he said noting the workshop was to review the Board’s Rules of Procedure as well as a brief review of the proposed zoning amendments for 2019.

A brief discussion about the posting of meeting and workshops on the website followed with Code Officer Herlihy to follow up.

Chair Carrara then told the Board that he was in the process of selling his house and his status with the Board was uncertain. “I would like to stay in Peterborough” he said adding “but I have to do what is financially responsible for myself and my family. I just wanted you to hear it first from me” he said. (The *Membership and Alternates* clause of the Rules of Procedure state members must reside in Peterborough). Vice Chair Chatfield interjected “since we are going down that road I want you to know that I will not be seeking re-election in May.”

Rules of Procedure:

Chair Carrara began with a brief review of each paragraph:

Authority: “straight forward, no changes” said Chair Carrara.

Officers: The most important distinction here was that once an alternate has been seated for a case, site visit or workshop they are a member of the Board.

Members and Alternates: It was noted there were five full Board members with up to five alternates that may be appointed. A brief discussion about terms and filling vacancies in the Board followed. No changes were made to this section.

Meetings: The Members reviewed the regulatory meeting schedule and appropriate noticing procedures. Ms. Laurenitis asked for clarification on RSA 674:33 III which states “the concurring vote of three members of the Board shall be necessary to reverse any action of the administrative official or to decide in favor of the applicant on any matter on which it is required to pass.” Ms. Laurenitis noted she felt this meant three members of the Board can call a meeting with a 48-hour notice. She went on to note the previous Chairman had inferred the Chair *may be approached* with a request but that it may not be granted at the Chairman’s discretion. She also noted in another conversation about this issue she was reassured by Town Counsel that the Chairman “is a Chair, not a King.”

Noting he didn’t want to get out of the order of the rules, Mr. Herlihy pointed out **Rehearing and Appeals** on page 5 which states “the Select Board, any party to a ZBA decision, or any person directly affected by a ZBA decision may apply for a rehearing within 30 days of the date of the decision and that request must be granted or denied within 30 days.”

Ms. Laurenitis then read from the Planning Board Handbook, *Appendix C: Suggested Rules of Procedure* (found in the Resource Library of the NH OSI website) as follows: special meetings may be called by the Chairman or in his/her absence, by the Vice Chairman or at the request of three members of the Board provided public notice to each member is given at least 48 hours in advance of the time of such meeting. The notice shall specify the purpose of the meeting.”

Chair Carrara replied that he had no issue with adding that to the Rules of Procedures. Mr. Chatfield suggested the Members seek legal counsel on the matter. “Getting the attorney’s input won’t hurt, how its reads effects how it is interpreted” he said adding “and it may be requests for rehearings from Board Members may be valid, they may not belong under this section.”

Quorum: A quorum constitutes three members (which may include a seated alternate). No changes.

RSA 674:33 III: The Members reviewed the concurring vote of three members of the Board was necessary to reverse any action of the administrative official or to decide in favor of the applicant on any matter on which it is required to pass.

Option of Continuation of a Hearing: The Members had a brief discussion on whether or not the applicant truly had the right to continue their case if a full Board was not present. Chair Carrara was not particularly convinced as Mr. Chatfield said, “it is not open to challenge and must be delivered to the applicant.” Ms.

Leedberg added “it is important the offer be made and documented, especially if the applicant chooses to proceed and then contests the decision for lack of a full Board”. “That’s a good point” replied Chair Carrara. Ms. Leedberg continued by noting “when an appeal goes to court it can be shown the applicant had the option to say no and opted to continue.”

Disqualification: Chair Carrara read the provisions of RSA 673:14 on disqualification or recusing. The Members discussed when recusing may be advisable as well as the question of uncertainty (whether member or co-members) should consider disqualification. It was noted the Rules of Procedure state if there is a majority vote by the Board for a Member to step down, that member shall disqualify themselves from acting on the case and absent themselves from the table during the public hearing and subsequent deliberation. (The Members did agree the recused Member may speak from the audience as a member of the public regarding the case). Section II of the RSA, however says that upon the request of a member or other members of the Board that a disqualification be requested “a vote shall be made prior to or at the commencement of any required public hearing (and) such vote shall be **advisory and non-binding**.” Mr. Herlihy interjected “or provided by local ordinance. If it is your rules you can do it differently.”

Chair Carrara noted that while he doubted the ordinance would be used to “get someone out of the way” it was ambiguous and asked for suggestions. After a brief discussion the Members agreed to eliminate the last sentence of *Disqualification a*. “If there is a majority vote by the Board to step down that member shall disqualify him/herself from acting on that case.” No changes were made to the Conflicts of Interest in *Disqualification b*.

Right-to-Know: No changes.

Audio Recording of Meetings: Chair Carrara confirmed that recording devices were permitted at ZBA meetings. He reviewed the guidelines of how the ZBA should record their meetings adding “we do not record our meetings, so we don’t have to worry about this unless we start to.”

Order of Business: Chair Carrara reviewed the order of business (call to order, introductions, review of public hearing, public hearing, unfinished business, new business, communications and miscellaneous, other business, approval of Minutes and adjournment). The Members agreed the Board may vote to alter the order of the meeting (and will subsequently do so when approved) to move Approval of Minutes to follow Introductions.

Application Process:

Chair Carrara read through *Applications* (submission of application, accurate and legal public notice and appeals process.) Mr. Chatfield noted the importance of a complete application. Noting the Members get a case packet prior to the hearing for review Ms. Laurenitis asked about brand new information being presented the night of the meeting. Chair Carrara noted minor changes were one thing, but the Board had the flexibility and discretion to continue a case if there was a major change to the original application.

Public Notice (location and timing of public notices, including the Town's website and certified mail to the applicant, any associated land use professionals and abutters)

Public Hearing (the process, organization and order of who speaks and when, including the deliberative statement before entering the deliberative session.) The Members agreed to remove P. "once the Board closes the public hearing and begins deliberations, any inactivated alternate must step away from the Board and sit with the public while the Board deliberates."

Decisions (no changes).

With regards to *Public Notices* Ms. Laurenitis noted throughout her research she had discovered the legislature had made an amendment to RSA 91-A:2 that was effective January 1, 2018 "which included the passage of RSA 91-A:2, II-b. which requires the online posting of meeting notices if a website is maintained in a consistent and reasonably accessible location or post and maintain a notice on the website stating where the meeting notices are posted." A brief discussion about how to enact this regulation in Peterborough followed as the town does not currently consistently post public hearings on the website. (Public Hearing Notices are routinely posted in the local newspaper, the notice boards on both floors of the Town Hall, the Library, Fire Department, Police Department, Recreation Department and Public Works).

Rehearings and Appeals:

Chair Carrara reviewed the timeframes involved in an appeal or rehearing noting the Board was not required to automatically grant a rehearing. He emphasized the process was a designed to afford the Board an opportunity to correct any mistakes in procedure that may have occurred in the first hearing. It was also noted that if a rehearing is granted it is extremely important the original Board Members be

present if possible. The Members also had another brief discussion on process and procedure of calling a “special meeting.”

The Members went on to review the distinction of the actual request for a rehearing was 30 days and any decision by the Board made at either a hearing, rehearing (including a decision not to rehear) can be appealed to the Superior Court within 30 days of the date of that decision. It was also noted that an appeal of a decision to the Superior Court would not prevent an applicant from using their approval to proceed with a project (at their own risk) *before* the 30-day appeal timeframe is over.

Records:

Chair Carrara reviewed the process and procedure for inspection and filing of meeting Minutes and Notices of Decision. Ms. Monahan noted both of these documents were required to be completed and available for review within five business days. While Meeting Minutes are included in the Member’s case packets each month Ms. Monahan asked why the Board did not get a draft copy of the Minutes within the five-day timeframe. The brief discussion that followed included a look at the Minute taker’s responsibilities and support of four regular Boards and Committees (ZBA, Planning Board, Master Plan Steering Committee and Economic Development Authority) many of which meet more than once or twice a month as well as five other “seasonal” Boards (Minor Site Plan Review, Capital Improvement Program, West Peterborough TIF District, Greater Downtown TIF District and South Peterborough TIF District) in addition to her regularly scheduled administrative duties. Ms. Monahan did note she had always been accommodated whenever she’d requested draft meeting minutes in the past and she could continue to do so.

Joint Meeting and Hearings:

“This is boiler plate stuff” said Chair Carrara. The Members agreed, and they moved on.

Site Visits:

Char Carrara reviewed the process of a site visit from the initial request and permission to the posting. He noted while Members may move around at the site public and member input, comments and questions should be reserved for the meeting that follows.

Adoption/Amendments:

Chair Carrara noted the amendments to the Rules of Procedure would be an agenda item at their public hearing in March.

Review of Proposed Zoning Amendments for 2019:

A copy of the 2019 proposed zoning amendments to 245-41 Criteria for Special Exceptions had been distributed and Code Officer Herlihy asked the members to review the document and submit any questions, concerns or comments to him in anticipation of the Planning Board's meeting February 11th. Ms. Monahan asked for clarification on 245-41 Criteria. She noted #2 and which stated, "the proposed use is consistent with the purpose an intent of the district in which it is proposed to be located and is an appropriate location for the proposed use, structure or condition." "What does condition mean?" she asked. Mr. Herlihy replied, "it depends on the request, it could range from topography to the height of a sign."

The workshop adjourned at 8:35 p.m.

Respectfully submitted,

Laura Norton

Administrative Assistant.