

Barrington Planning Board Meeting
January 15, 2009 - 7:00 PM
Meeting Room, Town Administration Building
Public Hearing for zoning changes

Members present: Chairman John Wallace
Selectwoman Jackie Kessler
Bill Horwood
Steve Oles
David Mott
David Vincent

Guests present: Attorney Jae Whitelaw

Residents present: David Allain
Fire Chief Rick Walker
Carolyn Cain

Chairman Huckins called the meeting to order at 7:00 PM. He introduced the members and Attorney Whitelaw. He opened the public hearing.

Article 4 – Dimensional Requirements – Section 4.2.1 – Standards for the GR and NR Districts

Huckins said that the Board was supporting requiring 40,000 square feet of contiguous upland soil and eliminating the 60,000 square feet of land without hydric A soils. He said that there was a petitioned article that had been presented with regard to the same issue which would be heard at the public hearing scheduled for January 20.

Allain said his concern as that what the Board represented would be less than the State requirements – Env-Wg 1005.03. He said that the state requirements were based on soil type and slopes. Allain said that when it was adopted the requirements came out to 55,000 square feet which was where we adopted the 60,000 square feet from.

Huckins said that our lot sizes would remain the same. Allain said that the soil must meet the minimum requirements. He said that what the Board was presenting would lack the minimum state requirements and be in conflict with the State rules.

Mott said any application would have to meet the state rules and regulations. He said he was under the impression that what the Board presented was more than the State requirements for upland soils. He said he thought that it was in excess of the rules.

Attorney Whitelaw said that she thought that the Board and Allain were talking apples and oranges. Allain said the average lot would not fit the requirements so the Board adopted the 60,000 square feet of soils that did not have to be contiguous. He said adopting less would not be allowed. Allain said in 1997 the Zoning Ordinance was amended to change the wetland requirements. He said at that time the requirements regressed.

Huckins said he did not think that the Town had adopted subdivisions that would not meet the State Rules. Allain said in 1997 there was a great deal of concern about the changes. He said that the 60,000 square feet along with the 35,000 square feet of

contiguous upland soils met the State regulations. He said that most of Barrington was in Group 3, 4, 5, and 6 soils.

Oles said there were Group 2 soils that would be lumped with 3 and 4. He said this would force an applicant to take more area for each lot. Mott said that the State Laws and Rules would have to be met. Vincent said the 35 square feet of contiguous upland would meet the requirements with 60,000 square feet. He said in other areas 25,000 square feet were required. Vincent said approximately 1 acre of contiguous upland was required. He said that if it did not meet the State regulations then it would not be approved.

Vincent said that the applicant was not before the Board to meet State regulations the Town requirements were what they must meet. He said requiring the 40 feet along with the 50 foot buffer created greater protection than what the petitioners proposed. Allain said that many towns were going to soil based lots. He said this improved the nitrate loading. He said these findings were based on science.

Vincent the Town was not trying to trump the State. Allain said it was not appropriate to be less than the State. He said that the requirements would satisfy a small amount of lots created in the Town. Mott said that the upland soils did not have to be contiguous by State requirements. He said our reason for the 40,000 square feet of contiguous upland was to handle the nitrate loading.

Allain said that some towns now have adopted HISS mapping. He said that his support for the petition was not self serving; he said it could be justified. Allain said that sites specific would have more detail but the soils were very important. He said wetland mapping on a lot would make it so one would know what remained.

Kessler said that the petition would be for 60,000 square feet of upland soils total. Vincent said anyone must meet State standards. The balance of the lot could be hydric soils. Allain said that the 60,000 square feet would not have to be contiguous. He said the requirements would increase the upland soils. Vincent said nitrates could work with wetlands.

Allain said soil based lot sizing dealt with nitrate loading. The units would be pro-rated. He said that Group 5 soils require 100,000 square feet. Mott said that the idea was to do away from the 60,000 square feet to create a pocket of contiguous upland for a building footprint. Vincent said this would be approximately 1 acre. He said a narrow lot would have to be designed differently. A 4K area would be needed.

Huckins asked what would happen if both changes passed. Attorney Whitelaw said she would have to think about this. Probably if both changes passed it would be the stringiest one in each case. She said that it was not clear what happens, but to go to Court could cost the Town a great deal of money. She said as a general rule the strictest would apply. Whitelaw said that each concept would have to be looked at on a case by case basis.

Kessler said having 2 changes for the same issue could confuse the voters. Huckins said we would need a second public hearing if we wanted to make changes and we did not have time for this. Mott said the petitioned article would state whether the Board approves it or not. Hatch said from day one she could not see any problems with what we had in place. Kessler asked what was wrong with what existed. Allain said the change would not meet the state requirements. What exists was changed in 1997 which

many did not know. He said 60,000 square feet of uplands would satisfy most of what exists in Town.

Allain said he was speaking as a professional and the other petitioners as well himself. Kessler asked if the 60,000 square feet could contain Hydric B soils. Huckins said that we had very few subdivisions approved by the Town that came back from the State disapproved. Allain said some are approved as accidents.

Horwood said that if we decided to keep what exists or make the changes, we need to make our own decision on what we review. He said subdivisions have to meet State requirements now so there was nothing different. Rick Walker said the Selectmen would take a position on the warrant articles and he was concerned that some might not state their position. Huckins said articles that pertained to zoning were approved or disapproved by the Planning Board; the Selectmen approve or disapprove articles that address money.

Carlene Cain spoke on the 40,000 square feet of good soils. She said the land behind her house has been bought and the septic system design was designed located toward her property. How far away from her line does it have to be? Allain said 10 feet. Cain said she was worried about contamination and would it need to be within the 40,000 square feet. She said she was concerned about her well.

Allain said if the well was installed before 1989 the septic designer should have seen this. He said in this case the septic system would need to be 65 feet from the property line. Mott said the average setback from a property line was 10 feet.

Huckins asked the Board members to individually state whether each should remove this article or not. Hatch – withdraw, did not support the change from day one, what exists works and sees no reason for change, the person owning the property should be considered, Vincent – withdraw because to have 2 addressing the same thing before the voter could be confusing, Oles - withdraw article so not to have 2 articles before the voter, Horwood – teach the public about our article and make our own decisions, whatever happens at the deliberative session happens, we should not retreat, Kessler – remove , do not want 2 articles before the voter, Mott – withdraw, agrees with Hatch, the article in place was working well , Huckins – withdraw, the one in place works well, the new proposal was more to clarify what was needed and make more simple.

Huckins asked for a motion, Mott made a motion to withdraw the change to the amount of upland soil needed, seconded by Oles; Oles – yes, Vincent – yes, Horwood, no, Mott – yes, Hatch – yes, Huckins, yes. The motion passed Alain said it might be a good idea to pull back all of the changes and have the petitioners and the Board work together on an article that both could support.

Definition of Jurisdictional Soils – The word area should be changed to wetlands as stated in the existing wording. Whitelaw said she saw no problem with the textual change. Mott made a motion to adopt the definition change, seconded by Vincent, all in favor.

Article 9.5.1 – Exceptions for Construction in Wetland Buffers – Include well heads in the 50 foot wetland buffer. Huckins said a well could be placed in a wetland but if one could not get through a buffer it would not be allowed. It makes sense to allow wells in

the buffer. Allain said the state allowed wells in the 50 foot buffer so the change made sense.

Clarify Driveways & Roads allowed in the 50 foot wetland buffer – Huckins said a person could get a wetland crossing from DES but could not cross the wetland buffer. The change would make one work with the other. Allain said this would make the town and state work together. The change would mean that a landowner would not have to get a variance to cross the buffer. Mott said the intent was to allow crossing the buffer when the wetland permit was approved by the State. Allain said this would make the crossing in the most direct route.

Huckins said the change would put a road in the structure category. Allain said it could be confusing and should stress minimum impact within the least impact area in the buffer. Huckins said the wetland buffer was to protect the wetlands. Allain said the only time the State would back down from granting a crossing was if the town had a more stringent rule. Huckins said the buffer would create this as it was a barrier to the wetlands. He said we viewed the crossing through a special permit which must be proven.

As there were no additional comments Huckins asked for a vote. Oles made a motion to adopt the changes, second by Vincent, all in favor.

Workforce Housing

Huckins said that by July 1 all towns and cities must have a provision for workforce housing. It must include 51% of the developable area in a town. Huckins said we had kept the Town Center out of this to protect commercial development. He said that towns needed to meet the regulations. Horwood asked what would happen if a person challenged and won.

Attorney Whitelaw said if the State could not require this mandate it would have to meet the burden of proof. She said that once a town passed the ordinance it would be in force until it was voted out. Huckins said the ordinance would be in the Town's best interest

Allain asked if there would be different density requirements. Huckins said that a person in workforce housing would be based on the medium income for purchase or rental. A builder would need to be able to build at a profit, if not go to Court. Huckins said that if a project needed more density by law we would have no choice but to grant it.

Huckins said that there were 3 towns in New Hampshire that do not have zoning which would not have to comply. He said when a town adopts zoning it is responsible to follow the requirements. Huckins said that Strafford Regional Planning Commission had received money from the State to work on this item.

Vincent said that we could not have 5 acre lots all over Town. He said that if a person wanted 5 or 6 units which would not meet the multi-family it maybe could meet the requirements for workforce housing. Huckins said this would apply to 51% of the Town excluding land not developable such as conservation easements, open space, etc.

Whitelaw said she did not see people jumping through hoops to do developments for the working class of people. Huckins said the housing would represent a 30 year agreement that it would have to remain workforce housing. He said we could be hit if we did not comply.

Carlene Cain said that we did not have housing for poor people. Huckins said that workforce housing was for working people not the poor. Cain said most people desire a home, not to pay rent. She said this type of housing should be shared with others. She said that we need a mix, not just a community for the wealthy.

Huckins said that the Town Center had been eliminated from the workforce housing areas to keep it for commercial development. Houses in the Town Center must be in a PUD – mixed use component – commercial to broaden the tax base. Cain asked if this would be upscale housing. Huckins said no, it could be units above commercial uses. He said people could walk to stores. Huckins said it could have mixed uses between high and low income. Whitelaw said the purpose of work force housing would be designed to be affordable to the working class. This would be through-out the town.

Huckins said that a developer would to represent up front that he wanted to do work force housing. He said that he must be able to make a profit. Huckins said that single family condos – apartments – 5 unit buildings must be cost effective and meet the state requirements for septic systems and wells. He said putting this ordinance in place gives the town more control over what was built.

Huckins said they would like to discuss this item at the deliberative session. Kessler said she would represent it at the session. As there were no additional questions or comments Huckins asked for a vote. Vincent made a motion to present workforce housing to the voters for consideration, seconded by Oles, all in favor. Horwood made a motion to close the public hearing, seconded by Oles, all in favor.

Town Planner

Huckins read the emails between Carol, Huckins, and Saunders which stated Saunders would not have to attend more than one meeting a week which would be strictly for the Planning Board meetings. Once in a while she might need to represent something to the Selectmen. She will not work for the Conservation Commission or the Zoning Board or attend their meetings. She would have the week of February 23 through the 27th off . These conditions were agreeable to Reilly, Huckins, and Saunders. Huckins said Saunders would get back to the Town if she chooses to take the planning job. When the position was filled the candidates should be told that the position was filled.

Hatch said she had received a letter stating that Michael Clarke was interested in serving on the Board. The meeting adjourned at 9:20 PM, motion by Vincent, seconded by Oles, all in favor. The next meeting will be a public hearing on the petitioned article and review of plans before the Board for hearings on February 5. The work session scheduled for January 22 will not be held.

Dawn Hatch, Clerk