



**BARRINGTON PLANNING BOARD  
BARRINGTON ELEMENTARY SCHOOL LIBRARY  
570 CALEF HIGHWAY  
BARRINGTON, NH**

**TUESDAY, January 4, 2011**

**MINUTES**

- PRESENT:** John Huckins, Chair  
Alan Kelley  
Anthony Gaudiello-Alternate
- ABSENT:** Edward Lemos, DVM; Vice Chair  
Jacqueline Kessler, Ex-Officio  
George Calef  
Steven Oles  
David Vincent  
Dawn Hatch-Alternate
- STAFF:** Connie Brawders, Town Planner
- GUESTS:** John Wallace-Barrington Conservation Commission  
James Hadley-Neighborhood Guardians

**CALL TO ORDER**

The meeting was called to order by Planning Board Chair John Huckins at 7:11 p.m.

**ROLL CALL**

A formal roll call was conducted confirming members present as stated above.

**ITEMS FOR DISCUSSION**

Pursuant to NH RSA 674:16; 675:3 and 675:7 notice was given of a public hearing to be held by the Town of Barrington Planning Board for the purpose of discussing the following proposed amendments to the Zoning Ordinance.

1. To amend Article 17-Definitions to read *Article 18-Definitions* for the purpose of inserting Article 17-Workforce Housing, adopted at the second session of the official ballot on March 9, 2010.
2. To amend Article 18-Appendix to read *Article 19-Appendix* for the purpose of inserting Article 17-Workforce Housing, adopted at the second session of the official ballot on March 9, 2010.
3. To amend the following to Article 18-Definitions; *Campground: A campground or camping park means a parcel of land on which 2 or more campsites are occupied or are intended for temporary occupancy for recreational dwelling purposes only, and not for permanent year-round residency.*

For the purpose of adding a new definition for promoting language consistency within the zoning ordinance.

4. To repeal the following from Article 18-Definitions; Day Care: An occupied residence in which child day care is provided for less than 24 hours per day, except in emergencies, for 7 to 12 children from one or more unrelated families. The 12 children shall include all children related to the caregiver and any foster children residing in the home, except children who are 10 years of age or older.

And replace by inserting the following definitions under Article 18-Definitions;

*Child Day Care Agency- means any person, corporation, partnership, voluntary association or other organization, either established for profit or otherwise, which regularly receives for child day care one or more children, unrelated to the operator or staff of the agency. The total number of hours in which a child may remain in child day care shall not exceed 13 hours per day, except in emergencies. The types of child day care agencies are defined as follows:*

*(a) "Family day care home" means an occupied residence in which child day care is provided for less than 24 hours per day, except in emergencies, for up to 6 children from one or more unrelated families. The 6 children shall include any foster children residing in the home and all children who are related to the caregiver except children who are 10 years of age or older. In addition to the 6 children, up to 3 children attending a full day school program may also be cared for up to 5 hours per day on school days and all day during school holidays.*

*(b) "Family group day care home" means an occupied residence in which child day care is provided for less than 24 hours per day, except in emergencies, for 7 to 12 children from one or more unrelated families. The 12 children shall include all children related to the caregiver and any foster children residing in the home, except children who are 10 years of age or older. In addition to the 12 children, up to 5 children attending a full day school program may also be cared for up to 5 hours per day on school days and all day during school holidays.*

(c) "Group child day care center" means a child day care agency in which child day care is provided for preschool children and up to 5 school-age children, whether or not the service is known as day nursery, nursery school, kindergarten, cooperative, child development center, day care center, center for the developmentally disabled, progressive school, Montessori school, or by any other name.

(d) "Day care nursery" means a child day care agency in which child day care is provided for any part of a day, for 5 or more children under the age of 3 years.

(e) "Night care agency" means a center or family home in which child day care is provided during the evening and night hours. A child day care agency may be licensed for day care, night care, or both.

(f) "Preschool program" means a child day care agency providing care and a structured program for children 3 years of age and older who are not attending a full day school program. The total amount of hours a child may be enrolled in a preschool program shall not exceed 5 hours per day.

(g) "School-age program" means a child day care agency providing child day care for up to 5 hours per school day, before or after, or before and after, regular school hours, and all day during school holidays and vacations, and which is not licensed under RSA 149, for 6 or more children who are 4 years and 8 months of age or older. The number of children shall include all children present during the period of the program, including those children related to the caregiver.

(h) "Dual licensure" means the issuance of 2 licenses by the department of health and human services to operate both a child day care agency and a family foster care agency, as provided by RSA 170-E:8, II.

For the purpose of promoting language consistency within the zoning ordinance and the State of New Hampshire child care licensing requirements.

5. To amend Article 18-Definitions; Commercial Recreation Facility: A privately owned and/or operated land use, either indoors or outdoors, where the main purpose is to provide the public with recreation. Examples of such facilities include skating rinks, water slides, gymnasiums, sports fields, miniature golf, driving ranges, swimming pools, race tracks, and stadiums.

By inserting: Commercial Recreation Facility: A privately owned and/or operated land use, *provided for gain or profit*, either indoors or outdoors, where the main purpose is to provide the public with recreation. Examples of such facilities include skating rinks, water slides, gymnasiums, sports fields, miniature golf, driving ranges, swimming pools, race tracks, and stadiums.

For the purpose of promoting language consistency within the zoning ordinance.

6. To repeal Article 19-Appendix; Daycare facilities and replace with *Child Day Care Agency*.

For the purpose of promoting language consistency within the zoning ordinance.

**Items 1-6. No discussion ensued.**

7. To amend Article 3.3 Supplemental Regulations for Zoning Districts; 3.3.1 Regulations Pertaining to All Districts; 2) Recreational Vehicles – A recreational vehicle, as defined in Article 17, shall not be construed as a dwelling unit under the provisions of this Ordinance. Temporary seasonal occupancy (not to exceed 120 days in any calendar year) of a recreational vehicle shall only be permitted at locations approved by the town and subject to all applicable state regulations. Occupancy of a recreational vehicle by any individual, group, or household, for more than 120 days in any calendar year shall not be permitted in Barrington.

By replacing with: *Article 3.3 Supplemental Regulations for Zoning Districts; 3.3.1 Regulations Pertaining to All Districts; 2) Recreational Vehicles – A recreational vehicle, as defined in **Article 18**, shall not be construed as a dwelling unit under the provisions of this Ordinance. Occupancy of a recreational vehicle by any individual, group, or household, for more than **180** days in any calendar year shall not be permitted in Barrington.*

For the purpose of promoting language consistency within current Zoning Article 13-Floodplain Management District Overly (FDO); 13.8 Requirements for Recreational Vehicles and Manufactured Housing and consistency with Site Plan Review Regulations Article 6-Recreational Campgrounds and Camping Parks.

Item 7. Brief discussion for clarification purposes of number of days occupancy may be permitted and regulation of location of recreational vehicles. Legal Counsel, Jae Whitelaw, (Mitchell Municipal Group, PA; 25 Beacon Street; E Laconia; NH 03246) has opined that under current zoning, Barrington does not regulate where recreational vehicles are permitted; therefore, Counsel recommends deleting the sentence, “Temporary seasonal occupancy (not to exceed 120 days in any calendar year) of a recreational vehicle shall only be permitted at locations approved by the town and subject to all applicable state regulations.” Occupancy period proposed under the Warrant is increased from not to exceed 120 days, to not to exceed 180 days, for language consistency within the current Zoning Ordinance.

8. To **repeal** the following under Article 5-Nonconforming Lots, Structures, and Uses; 5.1 Nonconforming Lots; 5.1.2. Merger of Certain Nonconforming Lots; If two (2) or more unimproved lots of record are contiguous and held in single ownership on or after the effective date of this Ordinance, and if one (1) or more of the lots have been rendered nonconforming, based on area or frontage, by passage of this Ordinance, the lots shall be deemed to be merged into one (1) undivided parcel of land.

For the purpose of conforming to the State of New Hampshire legislative act effective September 18, 2010 which prohibits a city, town, county, or village district from merging lots or parcels except upon application of the owner.

Item 8. Brief discussion for clarification on the impact on the current zoning ordinance by the State of the New Hampshire's legislative act, which prohibits the merger of non-conforming lots unless requested by the owner.

9. To amend Article 15-Zoning Administration; 15.2.2 Criteria for Granting Variances; In accordance with state statute, the Zoning Board of Adjustment is authorized to grant variances from the terms of this Ordinance if the request for said variance conforms to the provisions specified in Subsection 15.1.2 Paragraph 3) above. In addition to these provisions the Board shall also be guided by the following specific criteria in determining whether the granting of a variance is appropriate under the terms of this Ordinance. The Zoning Board of Adjustment shall, when considering a request for a variance, make findings of fact that consider the following factors:
  - 1) Special conditions exist such that literal enforcement of the Ordinance will result in unnecessary hardship to the applicant as defined under applicable law.
  - 2) Granting the variance would be consistent with the spirit of the Ordinance.
  - 3) Granting the variance will not result in diminution of surrounding property values.
  - 4) Granting of the variance would do substantial justice.
  - 5) Granting of the variance would not be contrary to the public interest.

By inserting after the above: *(A) For purposes of this subparagraph, "unnecessary hardship" means that, owing to special conditions of the property that distinguish it from other properties in the area:*

*(i) No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property; and*

*(ii) The proposed use is a reasonable one.*

*(B) If the criteria in subparagraph (A) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.*

*The definition of "unnecessary hardship" set forth in subparagraph (5) shall apply whether the provision of the ordinance from which a variance is sought is a restriction on use, a dimensional or other limitation on a permitted use, or any other requirement of the ordinance.*

For the purpose of conforming to the State of New Hampshire legislative act effective January 1, 2010 granting powers to the Zoning Board of Adjustment.

Item 9. No discussion ensued.

10. To amend the zoning ordinance to add a new Wetlands Conservation District submitted by petition.

Item 10. The Neighborhood Guardians citizens' petition to add a new Wetlands Conservation District was discussed. John Wallace, Chair of the Barrington Conservation Commission informed the Planning Board that after careful consideration and deliberation of the proposed Article, the BCC voted not to take a position on the petition article. Wallace interjected his personal opinion that this additional ordinance will create confusion in considering the regulations imposed by current Article 9-Wetlands Protection District Overlay (WDO) which was approved by the Town in 2005 and amended in 2009.

Chair Huckins offered the opinion of Legal Counsel Jae Whitelaw (Mitchell Municipal Group, PA; 25 Beacon Street; E Laconia; NH 03246) which expressed issues of concern that could potentially arise due to inconsistencies or ambiguities within the proposed wetlands ordinance, or between it and Article 5.

Guest Jim Hadley, resident of Nottingham and representing the Neighborhood Guardians, raised concern for Barrington Prime Wetland No. 40 and its perimeter area reduction. Wallace responded that the wetland boundary area is not clearly defined; rather that location is generally delineated. Huckins concurred that a wetlands scientist defines the perimeter to mitigate encroachment to wetlands whenever a proposal is presented to the Planning Board for consideration.

Alternate member Tony Gaudiello directed a question of fair representation and hearing by the Land Use Boards to Mr. Hadley, to which Mr. Hadley replied meetings and hearings, past and present have been justly received. Mr. Hadley elaborated the new wetlands ordinance as being one of several implementations sought by the Neighborhood Guardians to protect the regional waters and possible impact of water bottling company USA Springs, if, when emerging from bankruptcy, that company establishes its business practice in Nottingham. Hadley encouraged the Board to amend the Barrington current Wetlands Protection District Overlay Ordinance to include application for Special Permit as part of the process for site plan or subdivision approval, such as has been exemplified by the proposed wetlands ordinance, modeled after the Town of Tamworth wetlands protection ordinance.

In response to Mr. Hadley's reminder to the Board that the USA Springs was a Development of Regional Impact (see RSA 36:54-58), Chair Huckins and member Tony Gaudiello responded that the Town of Barrington, as an abutter, could mandate a cease and desist order to a neighboring municipality if Barrington's aquifer or surface waters were impacted.

Deliberation ensued. Gaudiello asked if by implementing a Special Use Permit, this request by applicant could provide a purposeful step in measuring the need to grant permission for other use, than use by right. Wallace spoke of his conversation with Kim Hallquist Staff Attorney at the NH Local Government Center who opined the Special Permit could grant the Planning Board greater latitude for considering a request than is empowered by the Zoning Board of Adjustment, whose powers are narrow and focused when deliberating a decision to grant a variance or special exception. Huckins reminded the Board that currently a Special Permit is required for construction within the wetlands buffer. Gaudiello added, that which is permitted currently is subject to conditional approval, and the use must be justified; it is not by right, a use within the Wetlands Protection Overlay District. Amending the text to include a Special Permit in general may make work against the strength of Barrington's current Wetlands Protection District Overlay.

Additional conjecture by Mr. Wallace and Mr. Hadley were shared regarding the water company's pump test and gauge to measure the water level for groundwater depletion.

Gaudiello asked if Mr. Hadley had followed through with the Barrington Town Planner's recommendation that Mr. Hadley and his group contact Strafford Regional Planning Commission and Rockingham Regional Planning Commission as this is a regional planning issue of concern, not limited by town geographic boundaries. It is noted that no follow up has been made at this time with the RPA's by members of the concerned citizens group.

Further discussion surrounded expiration of an application, expirations of permit applications, and how current zoning affects a previous application.

Mr. Hadley thanked the Planning Board for their time deliberating the topic.

Member Kelley asked if there were any additional concerns to be addressed or discussed at this meeting, as the meeting could not be considered a public hearing as no quorum of the Planning Board was assembled.

Chair Huckins suggested a meeting with Strafford Regional Planning Commission to further discuss developments of a regional impact in general as an item for a future agenda.

#### **ADJOURNMENT**

With no further items for discussion, the meeting adjourned at 7:52 p.m.

Respectfully submitted,  
Constance M. Brawders  
Barrington Town Planner