



BARRINGTON PLANNING BOARD MEETING

**NEW LOCATION: Barrington Middle School Cafeteria
Side Entrance
51 Haley Drive
Barrington, NH 03825**

**Tuesday October 20, 2015
6:30 p.m.**

DRAFT MINUTES

NOTE: THESE ARE SUMMARY ACTION MINUTES ONLY. A COMPLETE COPY OF THE MEETING AUDIO IS AVAILABLE THROUGH THE LAND USE DEPARTMENT

Members Present

Anthony Gaudiello-Chair
Joshua Bouchard arrived at 6:45 p.m.
George Calef
Bob Williams
Fred Nichols

Members Absent

Jason Pohopek Vice Chair
Fred Bussiere ex-officio

Alternate Members Present

Daniel Ayer
Richard Spinale

Town Planner: Marcia Gasses

MINUTES REVIEW AND APPROVAL

A. Gaudiello expressed they had not made it a practice of approving the minutes in parts. If a person was recused on any part they would not vote on any part. Members could comment on those parts for which they were not recused upon.

A motion was made by R. Spinale and seconded by D. Ayer to set aside the ruling of the Chair

G. Calef expressed the position was contrary to what they have done for the last five years. They were allowed to comment on those parts of the minutes they were not recused on and to vote on the minutes as a whole.

The Board discussed how to handle the minutes.

The ruling of the chair would stand until the Board adopts a formal procedure.

F. Nichols volunteered to submit procedural changes.

1. Approval of September 15, 2015 Meeting Minutes.

Insert G. Calef's Comment regarding line 69-72 "I could not comment on the application before the Board because I had just received it. I then recused myself because the next items were approving minutes I had been told previously I couldn't discuss"

Insert at appx. Line 98 G. Calef's statement "the well and septic were not on the plan for the Bodge Application"

Without objection the minutes were approved as corrected.

2. Approval of the October 6, 2015 Meeting Minutes.

A. Gaudiello asked that line 78 read "expressed the conservation subdivision had much to recommend it".

A motion was made by F. Nichols and seconded by B. Williams to approve the minutes with correction. The motion carried 5 in favor one present not voting.

NON ACTION ITEMS

3. Steve Purdy Our interest is to propose a Billboard advertising signage along Route 4 (Old Concord Rd), in the vicinity of 13 Old Concord Rd.

Steve Purdy did not attend.

COMMUNICATIONS RECEIVED

REPORTS FROM OTHER COMMITTEES

D. Ayer announced he had been appointed to the Conservation Commission

UNFINISHED BUSINESS

OTHER BUSINESS THAT MAY PROPERLY COME BEFORE THE BOARD

4. Review Table of Uses

Add assisted Living

Question on the number of nursing home beds

5. Consideration of Zoning Ordinance amendments. See attachment "A"
 - A. Gaudiello presented a hand out.
 - Severability make consistent in SR & SD and ordinance
 - Replace history with tabular
 - Use Current Master Plan

A. Gaudiello and J. Bouchard will work on indexing.

6. Review of permitted Sign Size and Lighting.
 - M. Gasses would be working with D. Ayer on this.

7. Cases before the board for November 3, 2015

SETTING OF DATE, TIME AND PLACE OF NEXT MEETING AND ADJOURNMENT

November 3, 2015 at 6:30 p.m. at the Barrington Middle School

F. Nichols requested we talk about dress and respect at meetings.

Respectfully submitted,

Marcia J. Gasses
Town Planner and Land Use Administrator

ZO 01.5	<p>Use uniform title and language for Severability in SD, SR and ZO. [Now in use SD=Savings SR=Seperability, and ZO= Severability Clause] · "In the event that any of the terms or provisions of [ZO = "this Ordinance"] {SD & SR = "these Regulations"} are declared invalid or unenforceable by any Court of competent jurisdiction or any Federal or State Government Agency having jurisdiction over the subject matter of [ZO = this Ordinance] [SD & SR "these Regulations"], the remaining terms and provisions that are not affected thereby shall remain in full force and effect."</p>
ZO 01.7	ZO 1.7 strike text statement of history – replace with tabular form
ZO 01.8	<p>ZO 01.8 Consistency With Master Plan and Capital Improvement Plan This Ordinance is intended to implement, to the fullest extent possible, the current Vision, Strategic Objectives, and Implementation Strategy of the Strategic Master Plan Update, Barrington, New Hampshire (the Master Plan), which was adopted by the Barrington Planning Board on March 11, 2004, along with all of the supplemental planning studies that were are therein adopted by reference. This document is hereafter referred to as the "Master Plan." This Ordinance is also intended to support the implementation of the Capital Improvement Plan (CIP), adopted by the Planning Board in June 2007, as amended. <i>[Effect: Using current Master Plan (a general) reference and striking the specific Edition of the Master Plan provides for applicability without the need for editing in specific editions.]</i></p>
ZO 02.1	ZO 2.1 strike excess words – " the provision of a series of"
ZO 02.1	Indexing of Zones and Overlay Zones
ZO 02.1.1	ZO 2.1.1 strike excess words – " it may be duly"
ZO 03.1	ZO 3.1 Strike current body text. [Re-enter text as paragraphs at ZO 3.1(1) & (2)
ZO 03.1(1)	[New Index] Insert parsed wording at ZO 3.1(1) Except as herein provided, no building or land shall be used or occupied except for the purposes permitted in the district as described in this Article.
ZO 03.1(2)	[New Index] Insert parsed wording at: ZO 3.1(2) A permit for the construction, installation, development, alteration, enlargement, moving, demolition, or use of a building or structure shall not be issued by the Building Inspector, or other town official, unless it complies with the provisions of this Article and/or has been granted a variance or special exception by the Zoning Board of Adjustment.
ZO 03.1.8(3)	ZO 3.1.8(3) strike such <i>add "a"</i>
ZO 03.2(1)	<p>Uses Permitted by Right A use listed in the Table of Uses is permitted by a matter of right in the district, which is denoted by the letter "P", subject to all other applicable local, state and federal regulations. If the letter "P" is accompanied by a number in parenthesis it indicates that the use is permitted only when in compliance with the conditions imposed as specified in the appropriate footnote, and subject to all other applicable local, state and federal regulations. A use permitted as a matter of right is denoted by the letter "P" in ZO Table 1 – Table of Uses. A use permitted as a matter of right is subject, nonetheless to all other applicable local, state and federal regulations.</p>
ZO 03.2(2)	ZO 3.2(2) Uses Permitted by Right with Specified Conditions A use permitted as a matter of right may have specified compliance conditions. The existence of such conditions is indicated by a number accompanying the letter "P." That number indicates the footnote reference specifying the condition(s).
ZO 03.2(2)	ZO 3.2(2) Uses Permitted by Right with Specified Conditions; A use permitted as a matter of right may have specified compliance conditions. The existence of such conditions is indicated by a number accompanying the letter "P." That number indicates the footnote reference specifying the condition(s).

ZO Table 1	Insert proper footnote reference for Conservation SubD in HCO - Now shows as "P". Should it be "P(5)?" <i>[Effect To show that all ConSubDs must comply with Article 6 regardless of zone]</i>
ZO Table 1	Insert proper footnote reference for Conservation SubD in HCO. Now shows as "P"; should be "P5" to show that all ConSubDs must comply with Article 6 regardless of

ZO 1.7History

ZO 1.7 (1) The history of the Zoning Ordinance, Town Of Barrington, New Hampshire is given in the following table:

Adopted:	September 12, 1972		
Dates of Amendment	March 8, 1977	March 11, 1980	December 8, 1981
	March 9, 1982	March 9, 1983	March 13, 1984,
	March 12, 1986	March 10, 1987	July 28, 1988
	March 15, 1989	March 14, 1990	March 12, 1991
	March 11, 1997		
The Zoning Ordinance adopted September 12, 1972 and as amended through March 11, 1997 was repealed and replaced with the Zoning Ordinance of March 8, 2005.			
Dates of Amendment	March 11, 2008	March 9, 2010	March 9, 2011
	March 13, 2012	March 12, 2013	March 11, 2014
	March 10, 2015		

A Zoning Ordinance was adopted September 12, 1972, and subsequently amended March 8, 1977, March 11, 1980, December 8, 1981, March 9, 1982, March 9, 1983, March 13, 1984, March 12, 1986, March 10, 1987, July 28, 1988, March 15, 1989, March 14, 1990, March 12, 1991, and March 11, 1997.

The Zoning Ordinance adopted September 12, 1972 and as amended through March 11, 1997 was repealed with the adoption of the Zoning Ordinance, March 8, 2005.

The Zoning Ordinance of March 8, 2005, the current Ordinance has been amended March 11, 2008, March 9, 2010, and March 8, 2011.

ZO ARTICLE 3 PERMITTED USES

ZO 3.1 General Provisions

Except as herein provided, no building or land shall be used or occupied except for the purposes permitted in the district as described in this Article. A permit for the construction, installation, development, alteration, enlargement, moving, demolition, or use of a building or structure shall not be issued by the Building Inspector, or other town official, unless it complies with the provisions of this Article and/or has been granted a variance or special exception by the Zoning Board of Adjustment.

ZO 3.1(1) Except as herein provided, no building or land shall be used or occupied except for the purposes permitted in the district as described in this Article.

ZO 3.1(2) A permit for the construction, installation, development, alteration, enlargement, moving, demolition, or use of a building or structure shall not be issued by the Building Inspector, or other town official, unless it complies with the provisions of this Article and/or has been granted a variance or special exception by the Zoning Board of Adjustment.

The provision at issue – is ZO 9.5.1(5);

This ordinance shall not prohibit the construction of principal and accessory structures within the buffer zone ~~or~~ on unimproved lots that were approved for subdivision by the Planning Board or which otherwise legally existed on or before March 13, 2001.

In 2001 when the 50 foot wetland buffers were introduced into the Zoning Ordinance the language presented to the public contained the word "or." "Or" continued in place until 2005 when a warrant article was adopted that "repealed" the then existing Zoning Ordinance and "replaced" it with a new Zoning Ordinance. In the replacement Ordinance, the Zoning Ordinance of 2005, the word "or" was replaced by the word "on" in ZO 9.5.1(5). There is no documentation to suggest the reason why this was done nor is there any recollection as to its cause or purpose.

In 2011 edition of the Zoning Ordinance the word "or" was returned to the text. Again there is no documentation to suggest the reason why this was done nor is there any recollection as to its cause or purpose. Since that time there has been argument for one or the other word ranging across "original intent and original language" to "simple typographical error."

Notwithstanding the arguments various suggestions that have been offered for these two revisions there is support for the wording as passed in 2005 (wherein "on" replaced "or"), in the form of RSA 31:126. Presumption of Procedural Validity.

Municipal legislation, after 5 years following its enactment, shall, without further curative act of the legislature, be entitled to a conclusive presumption of compliance with statutory enactment procedure. Any claim that municipal legislation is invalid for failure to follow statutory enactment procedure, whether that claim is asserted as part of a cause of action or as a defense to any action, may be asserted within 5 years of the enactment of the legislation and not afterward.

This can be taken to mean that after of March 8, 2010, there is no challenge to be made to the change from "or" to "on."

I propose the following amendments to the ZO to:

- 1) Insert "on" as a formal recorded change to the ZO (whether it is necessary to have this change as an amendment is a difference that makes no difference. If it is not necessary it is a nullity and if it is necessary it will have been done.)
- 2) Split the provision ZO 9.5.1(5) into parts creating a ZO 9.5.1(6) that will:
 - a) Address lots that were legally existing or before 3-13-2001, and
 - b) Address lots that were approved for subdivision by the planning board on or before 3-13-2001 but had not as yet been registered with Stafford County Registrar of Deeds. (2b makes explicit that it is the date of record or date of subdivision approval that distinguishes between lots covered by the 2001 Wetland Buffer Provision and not the date of development on the lot.

The wording of my proposal is as follows: (Where ~~bolded strikethrough~~ are deletions, and ***bolded italics*** are insertions.)

ZO 9.5.1(5) This ordinance shall not prohibit the construction of principal and accessory structures within the buffer zone ~~or~~ ***on*** unimproved lots that were approved for subdivision by the Planning Board ~~or which otherwise legally existed~~ on or before March 13, 2001.

ZO 9.5.1(6) This ordinance shall not prohibit the construction of principal and accessory structures on lots which otherwise legally existed on or before March 13, 2001.

There are two issues that is need clarification:

- 1) What if any purpose is served by the word "undeveloped?"
- 2) Whether "approved by the Planning Board" shall mean final approval or if the date of conditional approval with subsequent conditions of