

**PLANNING BOARD
JANUARY 10, 2012 at 7:30 PM
TOWN HALL, 41 SOUTH MAIN STREET**

In attendance:

Members: Kate Connolly (Selectmen's Representative), Judith Esmay (Chair), Joan Garipay, Jim Hornig, Michael Mayor

Alternates: Mike Hingston, Iain Sim

Staff: Vicki Smith, Jonathan Edwards, Judith Brotman

Others: See Attendance Sheet

1. **MINUTES:** The minutes of December 6, 2011 were approved as amended.

2. **CONSIDERATION OF POSSIBLE ZONING AMENDMENTS FOR TOWN MEETING 2012**

Discretionary Choices of the Zoning Administrator: To amend Section 1003.2 to read:

“The Zoning Administrator shall administer the Zoning Ordinance and shall not have the power to permit any use of land or buildings which is not in conformance with this Ordinance *unless there is applied an alternate lawful remedy that will bring the use into conformance. Discretionary choices of the Zoning Administrator to apply another remedy or to not enforce the ordinance in the absence of another remedy is appealable. Law placed in argument by Zoning Officials in any decision, hearing or deliberation will be accompanied by citation(s) of law and sources in public records.*”

Lorraine Pfefferkorn, proponent, said ZBA's in other towns with this language already in their ordinances have discretion in enforcement when there is another remedy available (i.e. after-the-fact variances are granted when mistakes are made). She mentioned Vermont case law where a judge found that when there is no other remedy in the law, the Administrator must enforce the Ordinance. Pfefferkorn said there is a lack of enforcement in Hanover because there's a claim that there is a choice and there is no desire. The position not to enforce should be appealable.

Pfefferkorn said requiring citation of law is necessary to assist petitioners in meeting statutory time limits to file appeals. Without citation, it is difficult to impossible for a petitioner to research the law that is being applied in time to meet the statutory appeal period, which is strictly enforced. She said the State makes it clear that a petitioner may raise issues of interpretation, application, and accuracy in statements of law. A petitioner should not have to hire an attorney to research the law for them.

Board Comments/Questions:

- It was noted that the proposed amendment was not submitted on the Town's Zoning Amendment Review Committee form. Portions of that form have not been addressed.
- What problem is this intended to address?
 - Pfefferkorn said there have been some questions as to what is appealable. If the Zoning Administrator had discretionary powers of enforcement, she could apply the ordinance as written, recognizing that there may be another way.
- What isn't working in the present system?
 - Pfefferkorn said it is not known what the Zoning Administrator can do. Having discretionary powers of enforcement would enable the Zoning Administrator to address violations in three ways: (1) do nothing, (2) apply the ordinance as written, or (3) find another remedy that will satisfy the law and bring the use or structure into conformance with the Ordinance.

Pfefferkorn offered to provide the Board a copy of a statewide survey regarding discretionary powers of enforcement. She will also clarify her proposal and resubmit to the Board on the proper form.

3. 12-03 PUBLIC HEARING ON REQUEST BY NATIONAL GRID FOR TRIMMING ALONG GOSS ROAD, A SCENIC ROAD

Janice Ramsey, Forestry Supervisor for National Grid, said the trimming is necessary to run wire along three utility poles to provide service to a new residence at 79 Goss Road.

Board Comments/Questions:

- SIM said he was stunned upon conducting a site visit earlier in the day to find that 90% of the work has already been done. He said the RSA is clear, the Board is asked to give permission to do the work before it is done.
 - Ramsey said the homeowner was quite persistent and suggested National Grid's line crew maybe acted in haste trying to get service to him. She said she would like to clean up the job and do it the way it was intended.
- It was questioned whether the applicant owns the property the lines are crossing.
 - Ramsey said no, they are on a public way.
- RSA 231:158 II was read into the record, *"Upon a road being designated as a scenic road as provided [by statute]... shall not involve the cutting, damage or removal of trees, or the tearing down or destruction of stone walls, or portions thereof, except with the prior written consent of the planning board... after a public hearing duly [convened]."*
- Staff was instructed to visit the site to obtain a full photographic record of what has been done.

Staff Comments/Questions:

- Unless National Grid wishes to come forward and offer recompense for damage to public property, there is no point to proceed with the hearing.
- National Grid should contact the Public Works Director and see what should be done to rectify the mistake.

It was moved by CONNOLLY, seconded by MAYOR, to continue this matter to January 24, 2012. THE BOARD VOTED UNANIMOUSLY IN FAVOR OF THE MOTION. Both Alternates participated in the vote.

The following two cases were heard together.

- 4. 12-01 SUBMISSION OF APPLICATION FOR MINOR SUBDIVISION BY DARTMOUTH COLLEGE TO DIVIDE ONE LOT INTO TWO LOTS (CREATING A 67.6-ACRE LOT AND AN 11.1-ACRE LOT) AT 1 GRASSE ROAD, TAX MAP 4, LOT 10, IN THE “GR-3” ZONING DISTRICT.**
- 5. 12-02 SUBMISSION OF APPLICATION FOR MODIFICATION OF AN APPROVED SUBDIVISION (CASE NO. P1980-01) BY DARTMOUTH COLLEGE TO REMOVE CONDITION 2(C), WHICH REQUIRES THE DONATION & DESIGNATION OF OPEN SPACE LAND ON THE EAST SIDE OF GRASSE RD FOR RECREATIONAL USE. THE PROPERTIES INVOLVED INCLUDE: 1-39 MACDONALD DRIVE, TAX MAP 48, LOTS 5-34, 2-14 MORRISON ROAD, TAX MAP 45, LOTS 12-19, 1 GRASSE ROAD, TAX MAP 4, LOT 10; LOCATED IN THE “SR-1” AND “GR-3” ZONING DISTRICTS.**

ESMAY read the Notices of Public Hearing.

Edwards stepped down to present the application. He said the current subdivision proposal will create a 67.6-acre lot that will continue to be owned by the College, and an 11.1-acre lot that will be owned by the Town through College donation. The Town intends to use its lot in conjunction with the adjacent Little League field for increased public recreational facilities. A sketch was provided to show that two regulation playing fields could be developed at the site. Edwards said the development of those fields or any other proposed use of that land would require Site Plan Review and a Wetlands Special Exception. Hank Tenney, Parks & Recreation Director, said this has been a long time coming. There have been a number of people requesting use of the Town’s facilities. This will be a great addition.

Board Comments/Questions:

- Is the applicant satisfied it is actually possible to develop this land as recreation without any impact on the wetlands?
 - Edwards said the field locations depicted in the Proposed Recreation Area sketch resulted from a desire to minimize the disruption of the 25-70’ wetland buffer and to prevent encroachment or disturbance in the 0-25’ wetland buffer.
- What sports would be capable of using the two depicted fields?
 - Tenney said soccer, lacrosse, football, Little League baseball, a hockey rink, etc. There are no plans to install permanent field structures, such as goal posts, that would limit the use.

Public Comments/Questions:

- An unidentified speaker asked if the road will be widened to deal with increased traffic.
 - Edwards said the Town must first study what makes sense at the site; then how to develop it in a way that minimizes disruption to the environment and adjacent neighborhoods.

- Jane Soderquist said it looks like there is a proposal that involves the designation of open space lands. Why is the College requesting to remove that condition from the original approval?
 - Edwards said the land identified in the 1980 subdivision decision that is to be donated to the Town is pretty wet and does not provide much in the way of recreational use. Over the course of discussions with the College, another 7 acres was added from the reconfiguration of what used to be the Water Company's non-watershed assets.
- Nancee Tracy asked when proposals to develop this land would be brought forward.
 - Edwards said staff has not talked about a timeframe.
 - Tenney said a process similar to the development of Thompson Terrace will be followed. The goal is to make sure abutters are involved.

Waivers:

1. Contour lines
2. Existing and proposed building sites
3. Building setback lines, parks, open space, watercourses, natural features, etc.
4. Soil tests, sewage disposal, municipal water and sewer
5. Zoning district designations

It was moved by MAYOR, seconded by SIM, to accept P2012-01 as complete with the waivers as listed above. HINGSTON pointed out a typo on the plat where it reads "after annexation". The motion was amended, and the amendment seconded, to include correction of the plat. THE BOARD VOTED UNANIMOUSLY IN FAVOR OF THE MOTION. Both Alternates participated in the vote.

It was moved by CONNOLLY, seconded by MAYOR, to approve the subdivision application P2012-01 dividing one lot into two lots at 1 Grasse Road, Tax Map 4, Lot 10, in the "GR-3" zoning district. THE BOARD VOTED UNANIMOUSLY IN FAVOR OF THE MOTION. Both Alternates participated in the vote.

ESMAY read into the record Condition 2(c) of the 1981 Planning Board decision in Case No. P1980-01: *"an additional 3.2 acres of donated open space land on the East Side of Grasse Road be designated for proposed future use as recreation areas, such use of land proposed to be under the control of the Town through the Parks and Recreation Board and with the consultation of the Home Owners' Association of the development, with such use to occur only after the completion of Phase A (i.e. when 80 percent of the lots are sold). No Final Plat for Phase C, or any part of the East Side of Grasse Road shall be approved until the Planning Board, the Recreation Board and the Developer settle the ultimate use of this parcel."*

It was moved by MAYOR, seconded by GARIPAY, to remove the above noted section. THE BOARD VOTED UNANIMOUSLY IN FAVOR OF THE MOTION. Both Alternates participated in the vote.

6. CONSIDERATION OF POSSIBLE ZONING AMENDMENTS FOR TOWN MEETING 2012 (continued from above)

Chickens: To amend Section 210.1 C. "Gardens and Animals" to read:

“Cultivating the soil, harvesting crops, and raising or keeping household animals not for gainful business. The raising or keeping of poultry, horses or other domestic animals whether or not for gainful business is permitted as an accessory use in the F and RR Zoning Districts.

In *all other* Zoning Districts the keeping of poultry, horses, or other non-household animals as an accessory use is permitted only when not for gainful business and only by ~~Special Exception~~ **when granted a Zoning Use Permit, and only when the following conditions of approval found to have been met:**

*A limit of 6 hens (no roosters allowed),
Identification of the location of the coop,
Details of the proposed coop structure,
Suitable fenced run area (no “free range” allowed),
Details showing a secured, rodent-proof feed container,
No slaughtering of birds on the property,
No odors from the enclosure are perceptible at the property boundary, and
Written notice of the proposed use to be sent to all abutters.*

Any objection to the proposal from an abutter would require a Zoning Board of Adjustment hearing and decision.

Yearly renewal of the use permit is required, after inspection by the Town Health Officer and the Zoning Administrator have verified continued compliance with codes and ordinances.

In the SR, GR and I Zoning Districts the keeping of poultry, horses, or other non-household animals as an accessory use is permitted only when not for gainful business and only by Special Exception.”

Judy Brotman, proponent, said several Special Exception requests submitted over the last year or two were granted with a list of standard conditions. It seems possible to save time with the ZBA by incorporating those conditions into the Ordinance to allow those specific cases. Any proposal that does not meet those conditions would have to seek ZBA approval. The amendment also includes yearly renewal of the zoning use permit and annual inspections, which have not been imposed by the ZBA in any case.

Board Comments/Questions:

- How many chicken cases have been filed?
 - Brotman suggested six or eight over the last two years.
- Were they all requested in the SR district?
 - Brotman said she would have to research that.
- How many abutters tend to show up at the hearings?
 - Brotman said typically they only appear when asked to by the applicant. It is also typical for the Town to receive letters from abutters approving and welcoming the use.
- Is it clear in the proposal that the applicant must speak with their neighbors prior to contacting the Town?
 - Brotman said notice would be sent to the abutters. If objections are filed, the project must be approved by the ZBA.
- How would an objection be raised?
 - Brotman said a written notice of objection would be required.
- Are the coops allowed within the setbacks?

- Brotman said they are considered structures and must be within seven feet of the side and rear setbacks. They are not allowed within the front setback.
- The annual inspection could verify compliance with the condition of approval relative to odor not seeping beyond the property boundary. Noise should be considered too.
 - Brotman said abutters can submit objections to uses occurring at any time. If a violation of a specific condition is reported to staff, the matter would have to be corrected or the chickens be removed. The proposal mimics what currently occurs as the ZBA hears and decides cases prior to the installation of the coops.
- It was questioned whether this should be addressed by Town Ordinance or by the Residential Planning Committee (RPC) who have been discussing various agricultural rules.
- If the result of an annual review could be the revocation of the use, language to that effect should be added.
- Having six or eight successful establishments, the ability to track them, and to protect the abutters, is worthy of consideration.
- A recent lecture series suggested Vermont & New Hampshire are ideal cultures in which to pursue substantial change to demonstrate the efficacy of local enterprises to improve on the impact of our citizenry on the environment. This would represent one small example of how that could express itself and bring this process forward.

Public Comments/Questions:

- Bill Fischel said there is a big difference between chickens in a rural setting versus chickens in a densely populated place. A town-wide policy could be problematic. Having a town-wide discussion would be beneficial.

It was moved by HINGSTON, seconded by SIM, to take this proposal away from the Planning Board and move it to the Residential Planning Committee for consideration in a larger zoning ordinance revision. THE BOARD VOTED SIX IN FAVOR, ONE OPPOSED (Connolly). The MOTION PASSED. Both Alternates participated in the vote.

.....
West End Heritage District: To create a new section designating a Heritage District, as enabled by NH RSA 674:21, for Hanover's West End neighborhood. The Heritage District would provide for the establishment of a Neighborhood Advisory Committee and design guidance for major new development in the neighborhood including tear-downs, new construction on vacant lots, doubling the footprint of an existing house or relocating a house on a lot.

Carolyn Radisch, proponent, said the West End Neighborhood Plan – a draft plan for the West End Neighborhood Heritage District has been revised to incorporate concerns expressed during the Board's December 6th meeting. The plan calls for review by a neighborhood advisory committee of "major" construction projects in the West End neighborhood that involve tearing down of a house, construction on a vacant lot, increasing the footprint of an existing dwelling by more than 100%, or relocating a building on the site. The committee's standards for review are not specifying architectural design but rather communal/neighborhood design (i.e. building orientation, setbacks, front elevations, street elevations with pedestrian entry, and downplay of garages). The committee would make recommendations to the Planning Board who would ultimately have the final say.

Radisch said one of the big complaints in a recent lawsuit (Kelsey v. Town of Hanover) was that neighbors just did not know what was going on. This plan provides a forum for conversation about nudging a homeowner to reinforce existing qualities that are very strong and very valued in the neighborhood. Bill Fischel added that the neighborhood has come together on a relatively limited but very important set of standards they think will preserve the desirable qualities of the neighborhood without being overly intrusive. He provided a copy of a letter that those in favor of the amendment are asking the Board to extend to all property owners in the West End neighborhood.

Radisch said the Master Plan talks about retaining a New England small-town character and historic building preservation, none of which are implemented in the Town's zoning. The character of the West End neighborhood, along with the downtown and College are components of the identity and character of Hanover as a small-town New England college town. The small-town feel comes from this in-town area and it is different from other neighborhoods in Hanover.

Board Questions/Comments:

- Is the neighborhood committee a standing committee?
 - Radisch said no, it would be an appointed committee.
- What is the rationale for having a Planning Board member on the committee?
 - Radisch said it would provide some continuity between the committee and the Board.
 - Robin Nuse said it is required per the State's Heritage District guidelines.
- A trigger for action would be identified by Town staff?
 - Radisch said any project filed with the Town that meets the criteria would be forwarded to the committee.
- The Planning Board does not have legal authority to require Site Plan Review for one- or two-family homes.
 - Radisch said the wording of the proposed plan is basically taken from the New Hampshire Statute involving the establishment of Heritage Districts.
 - Edwards suggested the Town attorney could clarify the legal ramifications.
- The location of a garage is often dictated by the topography of the land.
 - Radisch said West End properties have relatively narrow lot frontages. Locating a 25' garage at that frontage makes a huge difference in the feeling of the street. In the cumulative effect, the pattern going on with the most recent developments would completely change the character of the neighborhood.
- Does the Board want to have an umbrella ordinance which establishes the concept of allowing a Heritage District and this is how it would operate?
- It would be difficult to inflict a new concept such as a Heritage District on the entire Town. It would not work particularly well at this stage to try to use this as an umbrella ordinance.
- The committee members may find it difficult to say no to their neighbors.
 - Fischel suggested most people would want to discuss their plans with their neighbors. This plan institutionalizes that process. He said 90% of people are quite neighborly; however, it would not take much for the remaining 10% to undermine the neighborhood quality.

- West End is an attractive neighborhood that is inviting to inventive architecture. Architecture is often a historical record of what went on in a community. Twenty-to-fifty years from now there will be different houses in this neighborhood.
- The plan is quite light-handed, thoughtful, and triggered very gently by major disruptions, but there is a reluctance to intervene with an individual's plans to build a house, particularly given the challenges and opportunities of the lots available in this neighborhood.
- "Garage" should be mentioned in the paragraph that addresses activities subject to review.

Staff Comments/Questions:

- Could definition of "demolition" include "visible from the outside"?
- Why not designate this for starters as an overlay district for residential building form and restrict the issuance of Zoning Permits until applicants demonstrate their plan meets certain criteria?
 - Radisch and Fischel spoke of the importance of requiring the neighborhood forum.

Public Comments/Question:

- Janice Fischel said the common courtesy to speak with neighbors about potential impacts has not always happened. There needs to be the opportunity for the conversation to be had.
- Robin Nuse asked of the deadline for zoning amendment submissions for Town Meeting?
 - Smith said Planning Board sponsored articles must be submitted to the Town Clerk by April 3rd. Petitioned articles must be submitted no later than 90 days before Town Meeting.

Radisch recapped that now is the time to set something in place to have guidelines for new development. The proposed plan is very light-handed and fair. Staff was instructed to forward the plan to the Town attorney.

This matter was continued to January 24th pending staff's discussion with the Town attorney.

7. 11-40 REQUEST FOR VOLUNTARY MERGER BY DONALD AND ALINDA ROBERTS

ESMAY said the substance of this request was reviewed by the Board December 6th. This is a voluntary merger of two lots, both owned by the same owner. The Board postponed action on December 6th pending confirmation of its legality from the Zoning Administrator.

Judy Brotman, Zoning Administrator, distributed a letter she drafted December 9th which states that the Robertses have demolished the above-ground portion of the house, leaving a basement structure and a one-car garage. The remaining garage is not a principal structure. Brotman said her understanding is that the Robertses plan to remove the basement area after the winter. Once that structure is gone, the lot will meet the requirements of the Zoning Ordinance to be a single lot.

Board Comments/Questions:

- The garage is located within the front setback of the property. Approving the lot merger would create a lot with a non-conforming structure on it.

- Edwards said the garage is grand-fathered; that status does not change through the merger.
- If approved tonight, and all work there ceases, is the Zoning Administrator able to enforce the removal of the existing basement structure?
 - Brotman said the Board could approval this conditionally that it becomes effective when evidence of the remaining house structure is removed.
 - Smith said the merger form will not be recorded until said condition is met.
- Why doesn't the Board delay approving the merger until the demolition is complete?
 - Brotman suggested the Robertses want the merger done by April 1st for tax relief purposes.

Staff was instructed to inform the Robertses that the Board is ready to approve the merger but is simply waiting for the demolition project to be completed. Upon final inspection of the completed project, the Building Inspector is to provide a letter to the Board verifying that the land is cleared.

It was moved by SIM, seconded by MAYOR, to continue this matter to March 6, 2012. THE BOARD VOTED UNANIMOUSLY IN FAVOR OF THE MOTION. Both Alternates participated in the vote.

8. OTHER BUSINESS:

Pfefferkorn amendment: HINGSTON questioned the reason for Pfefferkorn's zoning amendment submission. Brotman said she believes the issue stems from a 1999 generator installation by one of Pfefferkorn's neighbors. When installed, the unit met the Town's noise standards. Those standards have since changed and the unit has been measured at 1-2 decibels over the limit. The Town has taken the position that it is not going to enforce the 1-2 decibel level encroachment. Pfefferkorn did not follow the statutory requirements to file an appeal and is now trying to change the ordinance regarding enforcement. Brotman said Pfefferkorn has been advised that approval of her proposed amendment will not change her situation.

Downtown Employee Parking Survey: Edwards reported that the Town received four responses to its request for proposals to conduct the survey.

9. ADJOURN: The meeting adjourned at 10:20 PM.

Respectfully submitted,

Beth Rivard