

**PLANNING BOARD  
JANUARY 24, 2012 at 7:30 PM  
TOWN HALL, 41 SOUTH MAIN STREET**

In attendance:

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

**Alternates:** Mike Hingston, Iain Sim

**Staff:** Vicki Smith, Jonathan Edwards, Judith Brotman

Others: See Attendance Sheet

**1. 12-03 CONTINUATION OF PUBLIC HEARING ON REQUEST BY NATIONAL GRID FOR TRIMMING ALONG GOSS ROAD, A SCENIC ROAD** (Previously heard January 10, 2012)

ESMAY reported that a further continuation has been requested. Continuing to March 6<sup>th</sup> should allow staff time to figure out what should be done given there are double layers of violations to address (utility pole installations and trees removed without approvals).

**It was moved by CONNOLLY, seconded by MAYOR, to continue this hearing to March 6, 2012.** The floor was opened for public comment. There being none, the Board voted and **the MOTION CARRIED.** [The vote count was not indicated on the tape recording.] Both Alternates participated in the vote.

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

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. [This amendment was also reviewed December 6, 2011 and January 10, 2012.]

Carolyn Radisch, proponent, distributed copies of a further revised plan which incorporates comments received from Edwards and the Town attorney. She said the objectives and development standards are the same, although they have been streamlined. The standards proposed are those that staff said the Board would like to see in all residential neighborhoods. Radisch said the Residential Planning Committee (RPC) has been talking for some time about form-based standards for new neighborhood zoning districts. The proposed amendment is a stopgap measure that can go in place between now and when the RPC's

zoning overhaul is adopted. Radisch proposed changing Section 213 to include an overlay district.

Board Questions/Comments:

- What does the statement “shall conform” mean? Who enforces it?
  - Radisch said it is conforming to zoning standards.
- Will there be a map or description delineating the overlay district?
  - Radisch said yes.
- Wouldn't it be more appropriate to have this as a recommendation for the RPC to blend into their efforts?
  - Radisch said there are consequences of not doing something now that residents of the neighborhood are not comfortable with.
- Coming up with something more form-based town-wide is going to involve far more energy. The question is how much will be achieved in the intervening year as opposed to what will happen town-wide with the new ordinance.
- It is difficult to comment on the proposed standards without visiting the area of the proposed Heritage District to see how it sits with what is actually on the ground.
  - It was pointed out that the proponents provided photographs of virtually all of the properties in the West End district.
- The RPC has been working very, very hard for three years. To confine every proposal to the RPC, then on to the Board, and then to the people of Hanover is doing a huge disservice to Hanover's residents. The Zoning Ordinance is a dynamic document and cannot be stalled to put everything together. There is a need for this and it is a current one. This should go forward.
- The neighbors should use their persuasive powers to talk with new owners and their architects to see if they can make their case.
  - Radisch said the crux of the problem is that new owners do not live in the neighborhood and there is never an opportunity to engage.

Staff Questions/Comments:

- This would create a new zoning district?
  - Radisch said it would create an overlay district for the GR and SR districts and add three standards to those districts.
- The proposed building front setbacks and averaging are different from what currently exists. The request is that this would override those existing regulations?
  - Radisch said no, it is intended to be the same.
- The front setback may be greater in the current ordinance than what it might be if all of the properties were averaged on the same side of the street.
  - Radisch said the proposal is to be more in line with what's on the ground now.
- This overlay district would be a separate section of the ordinance?
  - Radisch said yes.

Public Questions/Comments:

- Sheila Buckley, Sarah Buckey, Barbara Hall, and Robin Nuse spoke of the importance that this change be made now.
- Robin Nuse also commented on the neighborhood support of the plan noting that over 25 different people have attended the various Board meetings; others have submitted letters.

- Jay Buckey spoke of his neighborhood's sense of community and cautioned that perspective buyers of perhaps second homes don't really intend to be a part of it. Recent developments in the neighborhood have proven there is a need for this.
- Anne Downey also expressed concern for the intent of prospective buyers. She said the neighbors' persuasive efforts may not be enough. They could be stuck with a house for many generations that is not welcome to the street.

Radisch offered to work with staff to tweak the language further.

**It was moved by CONNOLLY, seconded by MAYOR, to move this forward to a public hearing with the intention that it be put on the Town Meeting Warrant after it is worked with by staff.** MAYOR asked if the staff members responsible for affecting the particulars find this workable. Brotman said it could be. SIM said it is premature to vote on an amendment that is just a few notes sketched out on a piece of paper. **THE BOARD VOTED SIX IN FAVOR, ONE OPPOSED (Sim). The MOTION CARRIED.**

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GR-4: To amend the Zoning maps, Table 204.5 "GR", Table 204.7 "RR", Section 902 "Term Definitions"; and add a new Section 330 "Resorts" relative to the Chieftain Motor Inn

Jody Roberts, proponent and owner of the Chieftain Motor Inn, said his property does not belong in the RR zone. This commercial facility is disrupting the lifestyle of the RR zone residents. It belongs in the GR-4 zone, which will enable him to better serve his community. Roberts said a hotel, existing as a Special Exception in the RR zone, cannot be financed. If he is not able to make modifications to the property the Chieftain is going to be in dire straits.

Board Questions/Comments:

- Are there any things Roberts needs that are not included in his proposal?
  - Roberts said no.
- Roberts intends to bring public water and sewer to whatever he builds?
  - Roberts said yes.
- Why would a commercial enterprise be included in any GR zone? Why not be in a new B zone? This is a B zone use?
  - Roberts said he was under the impression that qualified as spot zoning. The property abuts the GR-4; it makes sense to extend that zone. He noted that within a mile of the Chieftain there are several existing commercial uses.

The Board deferred review of this amendment pending review of the second GR-4 proposal.

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GR-4 Conditional Use: To amend the Zoning maps, Table 204.5 "GR", Table 204.7 "RR", Section 502 "Planned Residential Developments", Section 503 "Continuing Care Retirement Community", Section 902 "Term Definitions"; add a new Section 504 "Conditional Uses" in order to: (1) place the Chieftain in a district compatible with its non-residential neighbors, and (2) streamline the review process by introducing Conditional Use.

Edwards, proponent, said of his proposal:

- (1) Eliminating hotels from the RR district made the Chieftain non-conforming. The Master Plan recognizes the Chieftain as part of the non-residential land uses in that area. The simplest map change is to extend the GR-4 boundary to include the Chieftain.
- (2) Permitted uses, uses by special exception, and the proposed conditional uses all require site plan or subdivision review. Those reviews are complicated by a parallel and sometimes inconsistent review by the ZBA. This makes the process inefficient, time consuming, wasteful, uncertain, and prone to decisions made by one board which are not acceptable to another. The proposed amendment sets up a series of conditional uses which combine various types of special exception review with site plan and subdivision review, creating one consolidated, comprehensive review process. Standards for special exceptions remain the same. Advisory roles of other boards remain the same with the exception that their advice would be directed to the Planning Board, instead of the ZBA. Putting Kendal, the Chieftain, and Rivercrest in the same non-RR district and in a conditional use category gives flexibility and efficiency in review.

Board Questions/Comments:

- The Master Plan does not envision a district other than GR-4 for those northern precincts.
- Explain what is expected of the public benefits outlined in the proposal.
  - Edwards said the Board would decide whether a proposal for conditional use provides public benefits and, if so, are the benefits worth granting the enhanced development standards a conditional permit would allow. If granted, the development permit would be conditional upon the provision and maintenance of that public benefit.
- Why have two categories of conditional use? What is the intent of the dividing line for the two categories in terms of established public policy here in Hanover?
  - Edwards said Pg 11 of the amendment shows where the base and enhanced standards came from.
- What is the underlying policy principle? How many hotel units/acre should there be in town?
  - Edwards said he opted to regard various types of units (PRD, CCRC, hotel) in terms of exterior effect and affect on public resources. Setting a base standard common to all three levels of intensity, at or a little below what's currently allowed but above what's generally been done so far, struck him as reasonable approach to land use density as an overall policy.
- Were any of the RPC's discussions about land use density considered?
  - Edwards said no, the committee has not come up with density numbers. The general policy is to try to minimize artificial distinctions between types of uses.
- Implicit in all of this is the magic number of 23 for hotel rooms, which is probably not a viable number for a modern hotel.
  - Roberts said the Chieftain would be looking to expand to 44-50 units. He said he found Edwards' approach to be inspiring to force people to think outside of the box to move to the enhanced level. It gives the ability to come to the Board and make logical suggestions that benefit the community.
- What would the impact of a conditional use category look like?
  - Edwards said a conditional use up to the base level would be a permitted use. A conditional use above the base level but not exceeding the enhanced level is equivalent to a special exception.

- Why is a base level conditional use category needed if it is to be considered as a permitted use?
- This is basically repealing the Zoning Ordinance protections relative to parking and building height by inserting the discretionary values of any four Planning Board members when considering the conditions.
- Many of the Board's concerns come out of Edwards' drafting of the amendment. The two categories make this quite complicated. This should be simplified by identifying what areas of policy the Board wants to focus on.

Public Questions/Comments:

- Ann Morris suggested moving forward with the Chieftain proposal, slowing the review of the more complicated conditional use proposal, and involving more public input. She said the conditional use proposal is a very big change in process for a very small area of town. It will not be limited to this small area over the next five years. It is very desirable to increase efficiency and take less of people's time and money but the separate approaches by the ZBA and Planning Board are important in different ways. They also act as checks and balances on each other, which is the basis of our government.
- Betsy Sylvester said the proposed conditional permitting is unconstitutionally vague, subjective, and unfair. It could spread to the rest of the town and be a real threat all over. It puts an awful lot into the hands of the Planning Board. Sylvester said none of the expansion discussed by the Lyme Road Village Planning Group has happened and yet the Board is considering changing those requirements (height, lot coverage, open space) and will soon overhaul the entire Ordinance. She said let's not jump in with two feet without thinking about it harder and more slowly.
- Christine McDevitt, Co-Chair of the Lyme Road Village Planning Group, said she is dismayed that the Lyme Road neighborhood was not told about either of these proposals. The amendment process should go back to what it was insisted on being six years ago, which was a very open, very public process. Any change that occurs on Lyme Road affects all of its residents. Rezoning the Chieftain to GR-4 could have potentially great impact down the road. There is a lot of discussion that needs to take place.
  - Edwards said this was not meant to be sprung on the Board but this is the season for zoning amendments.

ESMAY proposed folding the conditional use proposal into the RPC's zoning reorganization efforts and developing the Chieftain's rezoning proposal in consultation of whatever remains of the Lyme Road group. GARIPAY said as a citizen who has lived in that area for 50 years, the Board needs to focus on what zoning is appropriate, how the area has evolved, and where they want it to go. HINGSTON suggested revising the Chieftain proposal to include the absolute minimum necessary to enable the hotel to go forward and to address the number of hotel units Roberts is seeking. SIM expressed concern for unintended consequences of expanding GR-4 uses.

**It was moved by HINGSTON, seconded by MAYOR, to refer the Roberts proposal to staff and the proponent for revision and to come back before the Board February 14, 2012. THE BOARD VOTED UNANIMOUSLY IN FAVOR OF THE MOTION.** Both Alternates participated in the vote.

The proposal regarding conditional uses was ordered to be folded in to the RPC's work.

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Section 1003.2: Expand Section 1003 “Zoning Administration” to include,

*“1003.3 Law placed in argument by the Zoning Administrator or other Zoning Officials in any decision, hearing or deliberation shall be accompanied by citation(s) or law and source such as public records.”*

Lorraine Pfefferkorn, proponent, distributed a simplified listing of her amendment; reduced since the Board’s January 10<sup>th</sup> review. She spoke about the 15-day statutory time limitation to negotiate zoning procedures. She said in those 15 days, one has to find the source the decision is based on, and find it alone. There is no concert requirement for the Zoning Administrator to state what his/her decision is based on. By not citing a source the recipient can’t verify whether the decision is perfectly in alignment with the source. Pfefferkorn said there is a difference between administrative decisions and sending someone a notice of violation. Administrative decisions are very rare and are not based on a violation. When made, the source of the decision should be noted.

Board Questions/Comments:

- Has there ever been a time when a citation has not been provided to you upon request?
  - Pfefferkorn said a request submitted after deliberation was possibly not answered because there is this belief that after a decision is made the case is over. People who are interested with this entire process need more help.
- Adding a requirement to provide legal citations underpinning any and all decisions would amount to having to assign a law degree to everyone on the ZBA and the Zoning Administrator. That is just not possible. These are citizen boards that do the best they can.
- Absent being a competent NH land use attorney, who could provide this information?
- It is clear that there are very few appeals of zoning decisions to the ZBA, however, that does not mean that there are very few decisions rendered. It would be an incredible burden to Town staff to have to conduct legal research for what are otherwise routine permits and a significant financial expenditure in terms of legal fees.
- For clarification, the current proposal is only dealing with amendments to Section 1003.3?
  - Pfefferkorn said yes.
- Enabling a disappointed applicant grounds for appeal due to a volunteer citizen board’s failure to appropriately cite statues in speech as well as in writing is worrisome.
- ESMAY shared her personal observation that staff is very helpful and responds very readily, openly, fully, and generously to requests for assistance and citations.
- The Ordinance is the only citation under which the decisions need be made.

Staff Questions/Comments:

- Staff and ZBA members cannot practice law without licenses.
- There are times when staff has to make decisions that applicants do not like. In some of those cases, those who object can never be satisfied.

**It was moved by HINGSTON, seconded by MAYOR, to not continue this amendment.** The floor was opened for public comment. There being none, **THE BOARD VOTED UNANIMOUSLY IN FAVOR OF THE MOTION.** Both Alternates participated in the vote.

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Accessory Structures: To amend Section 210.2 to read,

“In the RO, GR and SR districts, the gross floor area of all buildings devoted to accessory uses on any lot may not exceed 25 percent of the gross floor area of the principal building thereon. **For the purposes of this section, there shall be a 600 sf allowance for a garage structure, in addition to the 25 percent for accessory structures, whether attached or not to the principal building.**”

Judy Brotman, co-proponent, said Jack Wilson, the other co-proponent, and a number of residents in the SR and GR districts have been conflicted with the requirement that an accessory structure is limited to 25% of the gross floor area (gfa) of the principal structure. There used to be a 600 sf allowance given for garage in addition to the 25% of the gfa for accessory structures. A recent amendment made it possible to have any size accessory structure in the RR zone and eliminated the 600 sf garage reference from in-town residential zones.

Board Questions/Comments:

- Is the 25% gfa related to the footprint?
  - Brotman said no, it relates to a building’s volume not including decks, porches, etc.
- The key concept is putting back exactly the language that was taken out because it has been discovered to cause real problems for real people in the densely populated part of town.
- This would enable a 2,000 sf house to have 1,100 sf of garage?
  - Brotman said yes, noting that the typical garage is 22’x24’. Add a second floor for storage, you’ve reached the limit.

**It was moved by MAYOR, seconded by HINGSTON, to move this forward to a public hearing.** There being no further discussion, **THE BOARD VOTED UNANIMOUSLY IN FAVOR OF THE MOTION.** Both Alternates participated in the vote.

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Replica: To amend Section 803, to read,

“If a non-conforming structure has become structurally deficient the Zoning Administrator may issue a zoning permit for the razing, rebuilding and restoration of such structure ~~as a replica of the exterior of the original structure, being~~ **provided the new structure is** no larger in volume, footprint, floor space and height than the original structure, and in substantially the same location.”

Judy Brotman, proponent, said this would replace the requirement that a structurally deficient, non-conforming structure be replaced with a replica of the exterior of the original structure.

Board Questions/Comments:

- Before tinkering with Section 803 again, the Board should have a serious policy discussion about what it means. If setbacks are of any value, the Board should look skeptically at that Section.
- Are setback encroachments the most common source of non-conforming designations?
  - Brotman said yes.
- The RPC has taken a pretty strong stance against any structure within the side setback.

- The law typically distinguishes between small additions and repairing structurally deficient buildings. Generally most ordinances require non-conforming structures to be rebuilt in accord with the current regulations.
- There is no grandfathering to replace a building that is falling down?
  - Brotman said there is currently.
- This does not address major issues; it just tweaks the language to state that the exterior does not have to look like it did before.

**It was moved by SIM, seconded by CONNOLLY, to move this amendment as proposed to a public hearing and that the broader concept of Section 803 be considered by the Residential Planning Committee.** GARIPAY asked if there is a rush to get this through this year. Brotman said a specific application is not pending, however, there has been a project delayed due to minor exterior changes that then required ZBA approval. **THE BOARD VOTED SIX IN FAVOR, ONE OPPOSED (Hingston). The MOTION CARRIED.** Both Alternates participated in the vote.

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Temporary Disability Permit: To extend Sections 310 & 1006.4 to read,

*“310.3 Temporary permits may be issued by the Zoning Administrator for a period not to exceed 1 year, to allow the use of a temporary structure (such as a handicap ramp) so that a disabled individual will be able to more easily reside in his or her home. Such permits may be renewed upon application for an additional period of one year, for a maximum of three years, as long as the person with the disability continues to reside at the property.*

*The following conditions must be met:*

- A. The disabled individual is a resident of the property*
- B. The property owner agrees to remove the temporary structure at the end of one year, (or at the end of the approved renewal period), or apply to the Zoning Board of Adjustment for a Variance to Accommodate Disabilities (Section 1006.4)*
- C. The property owner will apply for a zoning/building permit for the temporary structure, and will meet all building code regulations.*

**Section 1006.4, “Variance to Accommodate Disabilities”**

The Board of Adjustment may grant a variance from the terms of this zoning ordinance without finding hardship arising from the condition of a premises subject to the Ordinance, when reasonable accommodations are necessary to allow a person or persons with a recognized physical disability to reside in or regularly use the premises provided that the Board of Adjustment:

- A. Shall determine that any variance granted under these provisions shall be in harmony with the general purpose and intent of the zoning ordinance;
- B. May stipulate in the finding and the Notice of Action included in the variance that the variance granted pursuant to these provisions shall survive only so long as the particular person has a continuing need to use the premises; and
- C. Shall require that the owner of the premises pay to the Town of Hanover all costs of recording the Notice of Action regarding such variance in the Grafton County Registry of Deeds; such recording shall be done by the Town of Hanover.



*A temporary permit may be issued by the Zoning Administrator, under Section 310.3, to allow the use of a temporary structure (such as a handicap ramp) so that a disabled individual will be able to more easily reside in his or her home.*

Judy Brotman, proponent, said there is a section of the Ordinance that allows a variance to accommodate disabilities. It takes several months to get. This is purely meant to help people that have a sudden and temporary disability. It would have a limited duration after which point a variance is required to keep the structure.

Board Questions/Comments:

- Would this apply when a resident takes in a family member who is disabled?
  - Brotman said yes.
- Condition 310.3A should be changed to mimic the language of 1006.4B and exclude reference to being a resident of the property.
- The 3-year maximum limitation should be reduced to 18 months.

**It was moved by MAYOR, seconded by SIM, to move this amendment forward to public hearing with the two changes as noted. THE BOARD VOTED UNANIMOUSLY IN FAVOR OF THE MOTION.** (Hornig adjourned from the meeting prior to the vote.) Both Alternates participated in the vote.

### 3. OTHER BUSINESS

Joint Meeting with the Board of Selectmen: A joint meeting will be held February 13<sup>th</sup> at 7:30 PM to review the Rental Housing Ordinance. Copies of the Ordinance were distributed to the Board.

RPC: Next meeting is scheduled for tomorrow at 1:30 PM.

Parking Group: SIM announced that the Parking Group consists of Lt. Patrick O'Neill, Edwards, Bill Baschnagel, Joanna Whitcomb, and SIM. The Group met to discuss responses received to the request for proposals. The responses were overly broad relative to the topics the Group was asked in their charge to address. Projected costs were higher than the Group was comfortable with. The Group agreed the request for proposal should be re-written and sent out to a select number of respondents.

Hanover Inn MOU: Edwards announced that the Memorandum of Understanding associated with the Inn Site Plan approval was finalized.

P2012-05 Mascoma Lake Farm LLC: A notice from Lebanon was received regarding a 2-lot subdivision along Route 4 and Ruddsboro Road, of which the Town abuts. A previously approved version of this proposal involved a driveway crossing a wetland that eventually flows into Hanover. Smith authored a letter to Lebanon for the previous application advising of the Board's concern relative to the wetland impacts. The current application shows a driveway access off of Route 4, away from the wetlands. Smith said she is no longer concerned about the proposal.

Smith was asked to submit a written statement to Lebanon referencing Hanover's previous wetland concerns and stating that the Board is happy to hear the driveway has been relocated.

Last Minute Submittals: ESMAY commented on the current trend to receive a lot of materials at the last minute. She expressed her personal opinion that those materials should not be considered. HINGSTON asked for more time to review the meeting mailing. The Board agreed to institute a Tuesday, noon deadline to be included in the meeting mailings. ESMAY said the Board will support staff's strict enforcement of the deadline.

4. **ADJOURN:** The meeting adjourned at 10:40 PM.

Respectfully submitted,

Beth Rivard