

**RESIDENTIAL PROJECT MEETING
MEETING SUMMARY
FEBRUARY 6, 2012**

Present: Judith Esmay, Jonathan Edwards, Vicki Smith, Kate Connolly, Iain Sim, Michael Hingston, Joan Garipay, Timothy McNamara

Minutes of January 30, 2012

The minutes of January 30, 2012 were reviewed. On a motion by Kate and a second by Iain, the minutes were unanimously approved.

Discussion about Nonconformity

Committee members read the 2002 NHMA Law Lecture: *Grandfathered The Law of Non conforming Uses and Vested Rights* in preparation for the meeting. It will be referred to during the meeting as needed.

The list of nonconformity situations from Jonathan's email of February 1, 2012 guided the discussion.

Statement A Buildings that are nonconforming ONLY with respect to side or rear setbacks should be allowed to expand.... ???

Abutter comfort, neighborhood character and safety are the reasons for setbacks. If the buildings are residential principal buildings, there is perhaps a different attitude toward the setback than if they are accessory structures. Different neighborhoods may also generate different opinions about setbacks. Choice 3 was agreed to be too draconian and punitive though some believe it's the general rule in the State. The Committee felt that most citizens in Hanover would not support Choice 3 either. The right to appeal and claim a natural expansion or to apply for a variance are available options. Reference was made to the *Grandfathered* booklet about the Court's statement regarding the purpose of zoning being to reduce the nonconformity as quickly as possible (p16). Kate supports Choice 1 (be allowed to expand in the nonconforming setback as long as they don't get closer to the property line) for Statement A, but not in the front yard. Others support Option 2; the Committee was divided.

Statement B Buildings that are nonconforming ONLY with respect to front setbacks should be allowed to expand..... ???

This question is meant to determine if Committee members' opinion about expansion is different if the front setback is considered rather than the side setback. Emergency access is not an issue for a front setback. The Committee deeply appreciates streetscape which is affected by front setback. The front setback is the interface with the public space. People are concerned about what happens in the front setback in a different way if the expansion is only a small addition jutting out instead of the whole building façade. Minimal natural expansion such as steps and awnings can be appropriate in a front setback.

Choice 2 (be allowed to expand only in that part of the lot where they are conforming) is the Committee's preference. Front setbacks are different from side and rear setbacks because they affect the streetscape, are prominently viewed and closely linked to the character of the neighborhood. As a general rule, the front setback should be respected.

Statement C Buildings that are nonconforming ONLY with respect to height should....???

The reason for worrying about height nonconformity was stated: parts of the building in a setback should not be allowed to expand upward as there would be further impingement on light and air and increased sense of encroachment from the perspective of a neighbor. When building height is increased in a side setback it blocks air and light to the detriment of a neighbor.

The Committee sentiment drifted toward a policy of no increase of the nonconformity in side or front setbacks and no increase in height.

Committee members reiterated that the policy should be firm with respect to 10 foot setbacks. They also thought that there should be no expansion at all into the front or ten foot side and rear setbacks. In the area where the building is in conformity, expansions should be permitted. If side or rear setbacks are established and are greater than 10 feet, in the area between 10 feet and the setback the current concept of 803 with a hearing process makes sense. Most members agreed that the new ordinance should allow expansion of existing legal nonconformities into the setback but no further than 10 feet. This applies to situations where there is nonconformity created by the ordinance and not for new situations that would create a nonconformity.

The Committee decided not to set forth criteria for natural expansion. It was decided that case law criteria should govern and guide. However, procedures should be developed to address these situations. The extent of increase of nonconformity must be considered by a board given the facts of the case.

Question D Does the answer to the three statements above change if it is a house, a garage, a barn, a chicken coop, a garden shed?

If a nonconforming chicken coop is removed because of age, it could not be re-built. This policy could apply to transient, low cost structures. If someone wants to expand such a nonconformity, then it should be moved to a part of the lot where it would be conforming. Kate would allow it to be expanded into the conforming area, but not otherwise improved or replaced. Others noted that expansions lead to greater permanence and if, for example, a garden shed is nonconforming, it should not be able to be expanded at all. Some members agreed that these insubstantial structures should not be expanded, improved or replaced in the setback. However, there was no consensus on this.

The Committee agreed that nonconforming insubstantial structures do not need to be immediately removed. If the structure was destroyed due to fire then to be re-built it should be located in a conforming area of the lot.

Since the current ordinance allows accessory structures to be built 7 feet from the side lot line, if not inhabited and not greater than 15 feet tall, there are a number of existing structures built to these parameters. These structures should not be able to expand further into the setback or vertically. A garage like this should be able to be expanded into the conforming space on a lot, but not into the nonconforming portion of the lot.

The Committee agreed that the nonconforming part can be left and that a garage can be expanded. This is in contrast to the garden shed type of structure policy as there is as different amount of investment.

There was a point made that the facts under which these garages were built need to be remembered and there should be no dwelling use in the setback. This could apply to a garage, carport or other

substantial accessory structures. It was suggested that the dwelling restriction may need to no longer be enforced. Kate feels strongly that the restriction against inhabiting a structure so close to the property line should not go away as that was a premise to which the structure was built. Other members agreed that it made sense to keep the “no dwelling” restriction for nonconforming parts of the existing structure. Enforcement of this is a challenge.

The Committee noted that they still need to discuss non conforming lots. Michael recommended looking at the definition of lot and focusing on the two sentences addressing lawful lots. Nonconforming uses will also be discussed.

Next week The Residential Committee will meet on Monday, February 13th at 1:30 PM at the Town Offices to discuss the non-conforming lots and uses.

Meeting adjourned at 4:20 PM.

Respectfully submitted,

Vicki Smith, Scribe

NEXT MEETING ON MONDAY FEBRUARY 13th at 1:30 PM at the Town Offices.