

**PLANNING BOARD
FEBRUARY 17, 2015 at 7:30 PM
TOWN HALL, 41 SOUTH MAIN STREET**

In attendance:

Members: Kate Connolly, Judith Esmay (Chair), Joan Garipay, Michael Mayor, Iain Sim; Nancy Carter (Selectmen's Representative); **Alternates:** Jon Criswell, Kelly Dent, Brian Edwards

Staff: Vicki Smith, Judith Brotman; **Others:** See Attendance Sheet

1. DISCUSSION ABOUT ZONING ORDINANCE RE-ORGANIZATION

The Board began review of the draft revised Ordinance, dated January 14, 2015. SIM and EDWARDS walked the Board through a spreadsheet they created from their comparison of the pages 1 to 19 of the December 11, 2014 draft revised Ordinance to the currently adopted Zoning Ordinance.

Section 202 Responsibility of owner / [Section 1004.2 of the current Ordinance]

- The difference between “shall” versus “will” was questioned.
 - ESMAY said the mandate “shall” is inappropriately used when applied to an inanimate object, like a road or building. It is applied to people, who you can mandate. This is a stylistic thing that writers of these types of documents use.
- Revision: “~~shall be~~ *is* subject”
 - ESMAY explained it is not ‘shall be in some future date’. It is subject from the moment it is adopted
- It was suggested to add “except as Section 106 applies”.
 - Brotman said starting to make exceptions could weaken it and could get into a lot more difficulties. The owner of a property is responsible for seeing that the property is used appropriately.
 - ESMAY said it is not an exception to the rule. The owner is fully responsible with the Ordinance, including that provision and all others.
- The 1st sentence references “owner”, the 2nd references “any person”.
 - Brotman said the owner is ultimately responsible, but a tenant can be held liable as well. No one is lawfully able to violate the Ordinance.

Section 203 Fees / Sections 1008, 1005.2 of the current Ordinance

- Is it a substantive change to move from “appeals and applications to the Board of Adjustment” to “all applications and appeals submitted under this Ordinance”?
 - Brotman said two statements were combined into one; they apply to two different processes.
 - DENT said the new Section 203 covers all the fees. Consolidating has not lessened the power of any section.

Section 204 Consent to inspect / Section 1009 of the current Ordinance

- Revision: “Every applicant for a permit or approval under this Ordinance ~~shall be~~ *is* deemed...”
- Revision: “relative to the application and to ~~ascertain~~ *the determination of* compliance.....”
 - ESMAY said a decision is being made, which is more than ascertaining.
- Revision: “An applicant’s refusal” replaces “Refusal by the applicant”
- Revision: “to consent to such inspection ~~shall be~~ *constitutes* grounds...”
 - ESMAY said it is now, not ‘shall be’ at some future date.
- Revision: “... grounds for disapproval of the application or ~~shall be~~ grounds for refusal by the town to issue any Certificate...”

Section 205 Zoning permit / Sections 1001.1, 1001.3, 1001.8 of the current Ordinance:

- The current text is somewhat more comprehensive than the revised text; the current text mentions State law and the Zoning Board.
 - Brotman said the Zoning Board does not issue zoning permits.
 - ESMAY said this was the Technical Review Committee’s (‘Committee’) attempt to take obfuscating language and make it clear without changing its meaning. Everything is subject to State law. That is stated in Section 101.
- The current text implies that there is an exception in State statute to the Zoning Administrator’s authority.
 - No one was aware of any such exemption.
- Revision: 205.1E and 201.1F are new paragraphs. Where were they imported from?
 - ESMAY said Section 1002. Those are two developments for which a Use Permit is required under the current Ordinance; however Use Permits no longer exist.
- Revision: 205.3 is completely rewritten and reordered.
 - ESMAY said these are really important deadlines and complicated issues regarding the right to appeal something and to whom you file an appeal. Appeal periods are triggered by certain events.
- Is the Zoning Administrator under time constraint to determine compliance?
 - Brotman said she has 15 days to look at what is brought in and approve it, disapprove it, or ask for more information.
- 205.3A says that for projects that go before the ZBA, abutter notification is satisfied by the ZBA public hearing process.
 - Smith said “notice” is defined by State statute, as is the method in which it must be provided. She suggested referencing the statute that dictates notification.
 - Brotman said the Committee tried to incorporate the idea of what needs to be done without being so specific that the Ordinance has to be revised every time the State changes something. She suggested the wording, “In the event the project comes before the Zoning Board of Adjustment, the Notice of public hearing must be sent to the abutters”.
 - Is there a different process if a project is commercial in nature?
 - Brotman said she did now know whether notice is provided for commercial projects. She said the permit pending notice is not required by law; it is something extra that Hanover does.

- ESMAY asked if it has been Brotman's practice, not to give notice after ZBA approval.
 - Brotman said she does not believe a second notice is provided.
- ESMAY suggested a substantive change is being made, requiring more notice than is currently provided. What we are trying to say is that for projects that require ZBA review, since notice of the ZBA public hearing has been given, notice of a pending permit will not be given.
- The Board agreed to the wording "In the event it goes before the Zoning Board of Adjustment, Notice of the Zoning Board of Adjustment public hearing on that project constitutes such notice to abutters."
- Revision: 205.3C talks about the application being 'complete'. The current Ordinance references it being 'filed'. Is there a difference between an application being filed versus being complete?
 - Smith said there is no legal definition in State statute for "filed". The term "finding of completeness" is a huge issue for the Planning Board but not for Zoning Permits.
 - ESMAY said the practice of this Town has been that "filed" means that the Zoning Administrator has deemed it "complete".
- Revision: The following from Section 1001.6 has been omitted, "Work may commence within this fifteen-day period, at the owner's risk, as soon as the Building Permit for this work has been issued" has been omitted.
 - ESMAY said we've made it abundantly clear that construction cannot commence prior to permit issuance. It is not allowed. We don't need to say that if you do, it is at your own risk.
- 305.3E says "does not take effect" twice, but does not say when it does take effect.
 - Brotman said it takes effect the date of the Zoning Board decision, assuming they rule in favor of issuance of the permit.

Section 206 Zoning Board of Adjustment / Sections 1005.1, 1005.2 of the current Ordinance

ESMAY said she asked Arthur Gardiner, when he was Chair of the Zoning Board, whether the Zoning Board wanted any changes to Section 206. Gardiner said no.

2. OTHER BUSINESS: None

3. ADJOURN: The meeting adjourned at 9:40 PM.

Respectfully submitted,
Beth Rivard