

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

In attendance:

**Members:** Kate Connolly, Judith Esmay (Chair); Iain Sim

**Alternates:** Jon Criswell, Kelly Dent, Brian Edwards

**Staff:** Vicki Smith

Others: See Attendance Sheet

1. **MINUTES:** Meeting minutes were not provided to the Board in advance of the meeting. Review was deferred.
  
2. **SCENIC ROAD PUBLIC HEARING TO REVIEW LIBERTY UTILITIES' REQUEST TO TRIM AND REMOVE TREES AND BRUSH ADJACENT TO AND BENEATH ITS POWER LINES ALONG FERSON, GOODFELLOW, KING, MOOSE MOUNTAIN, PINNEO HILL, RIVER, RUDDSBORO AND THREE MILE ROADS, ALL TOWN DESIGNATED SCENIC ROADS.**

ESMAY read the Notice of Public Hearing.

Jeffrey Carney of Liberty Utilities said a new rule was instituted by the Public Utilities Commission (PUC) that sets clearance standards and professional pruning standards for all utilities and requires trimming once every five years. A technique called "branch reduction pruning" will be used in Hanover. This involves shortening/reducing the mass of limbs in a specific portion of the crown to change where they may fail if they get loaded with ice or snow.

Carney said Liberty Utilities' contractors have worked on all of these roads for three five-year cycles. Most of the work will involve removal of trees that are structurally weak or have limbs that are partially and/or totally dead. Trees targeted for removal have been marked with red ribbon. Consent from the property owners is required to do the work.

Board Comments/Questions:

- How do you assure that your contractors follow the broad standards?
  - Carney said their work plan consultants, Environmental Consultants Incorporated, have the professional expertise to implement the program under the guidelines provided by Liberty Utilities. Asplundh is hired for the tree trimming.
- It was noted that work on these roads has not yet commenced.
- What does "prune and flat cut" mean?
  - Carney said pruning is actually working with the limbs of the tree, trimming them back to the trunk, a lateral branch, or something even smaller. Flat cutting is the act

of cutting all brush species capable of growing 45' tall. Part of our job is to reduce and/or eliminate future potential work. We may go slightly behind the tree line along the road and remove trees that will eventually grow into the space where we have to do our work.

- Will the property owners know exactly what trees will be cut?
  - Carney said ECI work planners will have that conversation with every owner. They will be as detailed as necessary to obtain the necessary consent.
- Do many owners refuse the work?
  - Carney said he is not aware of any refusals on the circuits involved with this work.

Public Comments/Questions: None

**It was moved by CONNOLLY, seconded by SIM, to allow Liberty Utility's request to trim and remove trees and brush adjacent to and beneath its power lines along Ferson, Goodfellow, King, Moose Mountain, Pinneo Hill, River, Ruddsboro and Three Mile roads, all town designated scenic roads. There being no further discussion, THE BOARD VOTED UNANIMOUSLY IN FAVOR OF THE MOTION. All of the Alternates participated in the vote.**

### 3. REVIEW OF ZONING AMENDMENTS PROPOSED FOR TOWN MEETING 2016

ESMAY said tonight will be the beginning of open discussion about each proposal. The next discussion will occur on December 1<sup>st</sup>.

#### 16-1 Section 902 Term Definitions – Outdoor Recreation

Proponent: Trustees of Dartmouth College

Recreation, Outdoor: Outdoor recreation activities which shall include such facilities as outdoor tennis courts, swimming pool, golf courses, play fields, and similar uses. No buildings *or structures* shall be allowed except for the necessary related uses such as restrooms and maintenance facilities. In all cases, any building *or structure proposed in support of such activities* shall be treated as a Special Exception.

or

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Tim McNamara of Dartmouth College said the current definition is limited. The goal is to have an interpretation that is sufficiently broad to allow at least the possibility for other support facilities to serve outdoor recreational activities, subject to special exception approval by the ZBA. McNamara said the particular issue driving the amendment is to allow supporting structures for cross country ski trails, such as snow making, a warming hut, a place to wax and tune skis, etc.

Board Comments/Questions:

- The change would alleviate the ZBA of making a finding that the structures are necessary to be used.
- It is good to get away from using “such as” and citing examples.
- The meaning of “homologation” was questioned. [Answer per McNamara: In order to compete at the NCAA level, they require some standardization, which is homologation,

between various cross country facilities that they participate at. Trails do not have to be exactly the same, but must fall into a range that allows you to be competitive.]

- The buildings or structures should not be used for activities that are not part of outdoor recreation.
- The definition should be trimmed down and specifics moved to Section 712 of the proposed revised Ordinance where it addresses outdoor recreational activities.
- “Building” became “structure” in the proposed revised Ordinance. [McNamara said hopefully “structure” will encompass infrastructure.]

It was questioned whether applicants should be required to provide two versions of their proposed amendment, one that relates to the current Ordinance and one that relates to the proposed revised Ordinance. A decision was not made on this matter.

### 16-2 Section 802 Change and Expansion of Non-Conforming Use

Proponent: Warren Coughlin

Section 802 Change and Expansion of Non-Conforming Use: Unless a Variance is obtained under Article X, no non-conforming use shall be changed to another non-conforming use and no such non-conforming use shall be enlarged or extended, except that any building or structure associated with a non-conforming use may be expanded up to ~~20~~ **100** percent of the gross floor area of the principal building existing at the time of adoption of this Ordinance, providing the other provisions are complied with.

Warren Coughlin said he owns a duplex on a single-family lot. Under the present rules, he is not able to add a second story. The addition would be allowed if his duplex were a single-family home. It would also be allowed if the 20% expansion limitation was related to building footprint, rather than gross floor area. A variance was sought and denied by the ZBA. Coughlin said the idea of putting limits on people’s imagination of what they want to do with their property seems the wrong way for government to go.

### Board & Staff Comments/Questions:

- The 20% limitation was derived from court cases. The ZBA Notice of Action for the Coughlin variance says that the proposed addition represents a 46% increase. Why is an increase of 100% proposed?
- What is the difference between having an accessory dwelling unit and having a duplex? What is the difference between expanding a use and enlarging a structure? There are other restraints that limit the size of a structure. From a planning perspective, this is a real challenge. This change will apply to every lot in town.
- The Planning Board cannot make a judgement on Coughlin’s specific problem. They do not have the authority to second-guess ZBA decisions. They can use Coughlin’s situation to discuss whether 20% is just. The Planning Board must be very careful when considering amendments that the change, when applied throughout the town, has a good result and reflects what the town wants to see happen in the character of its neighborhoods.
- It would be helpful to know the types of non-conforming uses for which increase in the size of the structure would be a natural course of events. How widespread are they? What are the consequences?
- 100% is far too high.

When this is next discussed, it will include input from the Zoning Administrator about unintended consequences and whether 100% is appropriate.

Mrs. Coughlin spoke of her son's intended use of the proposed addition and of her disappointment with the Town's denial of her son's request.

16-3 Section 317 Signs

Proponent: Judith Lee Shelnett Brotman, Zoning Administrator

Section 317 Signs

317.1 In all districts, signs or advertising devices shall conform to the following regulations:

- A. No sign other than official street signs or traffic directions shall be erected or maintained within the street right-of-way without approval of the Board of Selectmen or the New Hampshire Department of Transportation as appropriate.
- B. No sign shall be placed in such a position as to endanger motor vehicle or pedestrian traffic or obscure or otherwise cause confusion with official street or highway signs or signals.
- C. ~~Signs shall refer only to a use or activity carried on the lot upon which they are situated, **Only 'on-premises' signs are permitted**~~
- D. ~~except that~~ The Board of Adjustment may grant permission as a Special Exception for *the* erection, ~~off the premises,~~ of a limited number of *off-premises* signs, providing the following conditions ~~are is~~ met:
  - (1) Each sign *may* not exceeding two square feet in area on each of two sides.
  - (2) ~~Intended solely to give directional information.~~
- E. Signs may be illuminated only by continuous indirect white light. Such indirect lighting may include an opaque, reverse channel back-lit halo-type lamp. Any sign whose face, or any portion thereof, is illuminated from within regardless of accompanying refracting or diffusing devices, whether attached to a building, freestanding, or placed upon an awning, will be considered directly lit and not permitted. The light sources shall be so placed that they will not constitute a hazard to street or highway moving by glare.
- F. No flashing or animated signs with visible moving parts or intermittent lighting to create the visual effect of movement are permitted. Animation will be permitted on athletic scoreboards subject to the restrictions stated in Section 330 and as permitted by the Zoning Board of Adjustment as a Special Exception under Section 206.
- G. No sign shall project more than six inches above the roof or parapet line of a building, nor more than sixteen inches out from the wall to which it is attached. Signs which project more than four inches out from the building shall be no less than 8'-6" above the finished grade in front of the building below the sign.
- H. Signs shall be constructed of durable materials and shall be maintained in good condition and repair.
- I. The above regulations shall not apply to non-illuminated signs and window posters that are displayed from within a building.
- J. Posting of land shall conform to state law.
- K. Signs on awnings are limited to either ~~the name of the enterprise with~~ a maximum of eight-inch high letters, or ~~the logo of the enterprise~~ *a graphic* with a maximum dimension of twelve inches.
- L. The restrictions of this section shall not apply to ordinary directory panels and information signs maintained within a building or not intended for view from outside the property.

317.2 In NP, F, RR, RO, SR, GR and I districts, signs or advertising devices ~~pertaining to the use of the premises on which they are placed~~ are permitted only as follows:

- A. One sign, displaying the street number ~~and name of the occupant of a dwelling~~ not exceeding one square foot in area on each of two sides. ~~Such sign may identify an accessory professional office.~~
- B. In addition, in the RO, GR, and RR districts a sign for multi-family dwellings or PRD's, *or professional offices* shall be no more than 12 square feet on each of two sides and not located nearer to the street than one-half the depth of the required front setback.
- C. A property containing professional offices or other non-residential uses in the RO district may display one sign ~~which shall identify such uses,~~ not be larger than 12 square feet on each of two sides, and not be located nearer to the street than one-half the depth of the required front

setback.

- D. One bulletin or announcement board or identification sign for a permitted non-residential building or use, or for a lawful non-conforming building use, not exceeding twelve square feet in area on each of two sides and not located nearer to the street lot-line than one-half the depth of the required front setback.
- E. For churches and institutional buildings not more than two bulletin or announcement boards or identification signs are permitted, none of which may exceed thirty square feet in area on each of two sides, nor may be located nearer to a street lot-line than one-half the depth of the required front setback.
- F. **Residential Yard Signs** A ~~“For Sale” or “For Rent” sign~~ not exceeding four square feet in area on each of two sides and not located nearer to a street lot-line than one-half of the depth of the required front setback.
- G. For recreational uses, any number of ~~directional~~ signs, not exceeding one square foot in area on each of two sides, may be located on the lot.

317.3 In B and D Districts, signs or advertising devices ~~pertaining to the use of the premises on which they are placed~~ are permitted only as follows:

- A. Any sign permitted in Section 317.2 above, or the following as an alternative:
- B. One or more signs not to exceed 25 square feet of total area per sign attached to a building and/or a permanently extended awning the sum of which shall not exceed a total area of one square foot for each foot of building frontage upon a public street or highway. The area of the sign or signs shall not exceed two hundred square feet of total area on each street upon which the building has frontage. For buildings with frontage of less than fifty feet on a public street or highway, the total area of signs for that frontage shall not exceed seventy-five square feet. For buildings with frontage greater than or equal to fifty and less than one hundred feet on a public street or highway, the total area of signs for that frontage shall not exceed one hundred square feet. The total size of signs on any building front shall not exceed that calculated using the dimensions of that building frontage. The total area of signs having more than one surface shall not exceed the limits in this paragraph.
- C. A non-illuminated directory sign, ~~bearing the name or type of business of the principal tenants,~~ provided it is located at the principal entrance or access to such ~~rented~~ **business** areas and the area of such sign devoted to each tenant shall not exceed 72 square inches, and the total area of such a sign does not exceed eight square feet.
- D. Each business building located 50 feet or more from the street line and having this setback in open land may display one free-standing sign, not to exceed 30 square feet on each of two sides nor to be located nearer to the street lot-line than one-half the depth of the required front setback.
- E. One menu sign ~~bearing the name and type of offering of each restaurant~~ not to exceed six square feet in area. The sign may be attached to the restaurant building, or may be free-standing, provided it is located at or near the principal entrance to the restaurant and is set back at least one foot from all Lot lines.
- F. One temporary sign per business, not to exceed five per building. The temporary sign(s) may be attached to the building or displayed on the lot containing the building in which the business is located, or within fifteen feet of that lot and so as not to impede pedestrian or vehicular access, and shall not be subject to the restrictions of Section 317.1 F. Each temporary sign, ~~such as, but not limited to, sandwich boards, banners, flags, mannequins, or other advertising devices, must be strictly pertinent to the business operated on the premises and~~ shall be displayed only during the actual hours of that business’s operation. The total area of any temporary sign shall not exceed six square feet on each of two sides. No temporary sign shall be erected without first obtaining a Zoning Permit from the Zoning Administrator as provided in Article X. Permits shall be issued for a period not to exceed one year.
- G. The placement of one sign over a private access way between two buildings for a business or businesses with principal entrance(s) from the private access way shall be allowed, provided that the sign shall not exceed a total area of fifteen square feet for each of two sides per business and twenty square feet for each of two sides in total area. The sign shall be a minimum of 8’-6” above finished grade, except that if the access way is used by vehicles, the sign shall be a minimum of 13’-6” above finished grade.

317.4 In OL and BM districts, signs or advertising devices ~~pertaining to the use of the premises on which they are placed~~ are permitted only as follows:

- A. Any sign permitted in Section 317.3 above, or the following as an alternative:
- B. Not more than two signs not attached to a building, provided that the total area of any one side of such a sign shall not exceed 30 square feet and the area of each sign counted separately, shall not exceed 60 square feet. Any such sign or signs shall not be located nearer to a street lot-line than one-half the depth of the required front setback.

Smith said the current draft of the amendment is not satisfactory to Town counsel. Counsel is being very conservative and very rigorous in taking the Reed U.S. Supreme Court case very seriously. Judy is trying to preserve something of what we have.

Board Comments/Questions:

- Per the ruling in the Reed case, we will be confined to size and placement.
- Can we limit residential yard signs in 317.2F to one or two per property? The proposed change to 317.2G is too broad as well.
- There is a variety of speech which is not necessarily advertising but expressing a view. Does the town want to see a proliferation of signs right out at the roadside expressing the view of every resident? Should we be thinking about positioning that type of sign on a lot?
- On-premises, off-premises gets very close to content. The only way to know whether a sign is on the proper premises is because of the content of the sign.
- How are signs dealt with when they are located within a right-of-way?
  - Smith said she will research who approves them and/or enforces their use.

ESMAY said she was hoping that classifying signs as accessory uses, in the proposed revised Ordinance, might somehow help.

16-4 Table 204.4 "I" Institution

Proponent: Trustees of Dartmouth College

1. Revision to boundary between districts I and GR-2 as shown on Appendix to this Proposal.
2. Table 204.4

Setback Requirements:

For Buildings on lots adjoining residential districts the minimum side and rear setbacks adjoining the districts shall be 75 feet *except for lots adjoining GR-2 residential districts abutting a state numbered route, the side and rear setbacks shall be 15 feet.* The required front setback shall be 20 feet. For properties in the Institution District on which a setback line is shown on the Downtown Area Setback Line map, the minimum front setback shall be the distance established by the line shown on the Downtown Area Setback Line map. In all other cases there shall be no side or rear setback requirements.

Maximum Height:

Sixty (60) feet, except that the maximum height shall be 35 feet within 150 feet of a residential district *other than GR-2 residential districts abutting a state-numbered route.* In cases where the land slopes downward from the street, the building height measured on any face other than the front shall not exceed 75 feet. See also Section 209.4.

Ellen Arnold and Lisa Hogarty of Dartmouth College presented the amendment. Arnold said under current zoning, there is a 75' setback on I District lots that abut a residential district. There is also a 35' height limit when within 150' of a zoning district boundary. Hogarty said the proposed amendment would allow for the expansion of the Thayer School. She walked the Board through a presentation of a basic concept of future development of the north side

of West Wheelock Street. Arnold said the development is consistent with the objectives of the Master Plan. In order for the development to go forward, the following zoning changes are needed:

- \* Zoning boundary line adjustment - annexing the College-owned property along West Wheelock Street from the GR-2 District to the I District, enabling the construction of a parking garage.
- \* Reduce the side and rear setbacks on I District lots that abut the GR-2 District and a state numbered route from 75' to 15'.
- \* Eliminate the 35' height restriction on I District lots that abut the GR-2 District and a state numbered highway.

Board & Staff Comments/Questions:

- This is another way of getting to the end result of the West Wheelock Gateway District. It seems pretty fair. Putting a parking garage in that area is an excellent solution to that hillside.
- The proponent's interpretation of the areas this would affect was questioned.
- This is self-serving but would not be exclusive to the College. Wouldn't it be smarter to confine this to West Wheelock Street?
- If confined to that area, would it be considered spot zoning? [Answer per Arnold: Based on NH case law, it would not be spot zoning primarily because the lots are adjacent to the existing institutional district. Spot zoning is usually picking out one small segment that is totally different from everything else around it.]
- One of the reasons that the voters turned down the West Wheelock Gateway District was a concern about traffic. As a result of the proposed development, would all of the Dartmouth employees that enter town via Ledyard Bridge turn up Engineering Drive? Pedestrian safety is another matter of concern for the public.
- Renderings and details of the garage size would be a good selling point for the voters.
- If the amendment was limited to the West Wheelock area, that area could still be considered in the continuing effort to develop a West Wheelock Gateway District.

Arnold said she will speak with the Zoning Administrator about limiting this to the West Wheelock area.

Continuation of 16-2 Section 802 Change and Expansion of Non-Conforming Use

Proponent: Warren Coughlin

Many of the Board members' previous comments were reiterated. New comments included:

- Allowing a non-conforming use to continue, and to expand by 20%, is generous.
- There has been quite a bit of expansion at this property in recent years.
- Coughlin is not trying to expand the use but to provide better living accommodations for the people that are already there.
  - You cannot expand a building without expanding the use. There is concern that 'if you build it, they will come'. It has happened over and over again.
- Is there another section of the Ordinance that could be amended to address this issue? Rezoning the whole street?
- The avenue by which a Zoning Board denial is challenged is through the court system. For the Planning Board to address the matter would be by way of changing density rules.

- The unintended consequences of allowing people the right to double their non-conformity could come back and hit us hard.

Other Amendments:

- \* The Town will be submitting an amendment that has to do with infrastructure improvements on West Wheelock Street. Currently you cannot build anything within 25' of the cemetery.
- \* Kendal at Hanover will be not be submitting a proposal for the current year.
- \* SIM's amendment about lots on two districts will be discussed in the context of the technical review.
- \* It was questioned whether an amendment should be added to define and qualify porches so as to exclude them from the front setback restrictions. It was agreed not to include this in the current year's discussions.

#### **4. CONTINUATION OF REVIEW OF RE-ORGANIZED ZONING ORDINANCE**

The Board reviewed a list of Substantive Changes that includes revisions from November 2<sup>nd</sup>.

#30 New definition of affordable housing: ESMAY reported that the new definition appears to come from the definition in the present Ordinance for "inclusionary housing".

#32 Antenna: ESMAY said of the proposal to omit "external" from the definition of "antenna", language in Section 322 mentions installing equipment within a structure. To define "antenna" as something that is external presents a conflict. It was questioned why an antenna located within a structure requires zoning consideration. ESMAY said defining something does not necessarily bring it within the authority of the Planning Board.

#21 Special exception use in NP: ESMAY will research this and report back to the Board.

#40 Building footprint: The Board discussed whether decks and balconies should be included in the definition of "building footprint". They also discussed the difference between "building footprint" and "lot coverage". It was noted that it is the current practice of the Zoning Administrator to include decks and porches in the calculation of building footprint. The point of defining "building footprint" is to establish some kind of limit on the amount of lot that a building can cover. If the goal is to keep buildings from being too large, do we feel that decks and porches add to the bulk of a building? It was agreed to keep the language of the current Ordinance and to revisit this matter in the future.

#70 Inclusionary housing: Do we want to reference a document that actually lists the income limits?

#109 & #110 Sawmill & temporary sawmill: How do you quantify what is temporary? A sawmill is a sawmill; do we need to define "temporary sawmill"? The Board will continue review of this at the next technical review session.



**5. OTHER BUSINESS:** None

**6. ADJOURN:** The meeting adjourned at 10:20 PM.

Respectfully submitted,

Beth Rivard