

**Official**  
**As of 7/14/08**

**HOOKSETT PLANNING BOARD &  
ZONING BOARD OF ADJUSTMENT  
WORKSHOP MEETING  
MINUTES  
HOOKSETT MUNICIPAL BUILDING  
Thursday, June 19, 2008**

**CALLED TO ORDER**

Chairman D. Marshall called the meeting to order at 7:10 pm

**ATTENDANCE**

**Planning Board:**

Chairman D. Marshall, Town Administrator D. Jodoin, Y. Nahikian, D. Dreffs, B. Ehlers, J. McHugh, J. Gryval, and Town Council Rep. P. Rueppel.

Excused: Vice-Chair R. Guay, and D. Hemeon

Absent: R. Duhaime, and R. Sullivan

**Zoning Board of Adjustment (ZBA):**

Chairman T. Murphy Roche, J. Levesque, and Town Council Rep. J. Gorton.

Excused: Vice-Chair C. Pearson, R. Duhaime, R. Savoie, D. Johnston, and R. Bairam

**PLANNING BOARD AND ZBA TRAINING**

David Preece, Executive Director for Southern NH Planning Commission (SNHPC), and Steve Buckley & David LeFevre, Land Use Attorneys, presented Planning Board and ZBA topics.

D. Preece: Provided an overview of tonight's training and introduced the Land Use Attorneys.

**Architectural Design**

S. Buckley: Presented an overview of architectural design review. Preliminary review (conceptual or design review) is the first stage. Before a regular planning application, you would need to amend your Town statute to include the level of detail based on the scope of the project or for all your projects. Another amendment you can do would allow the Planning Board to modify Zoning Board regulations (performance mechanism).

J. McHugh: We have a performance zone (PZ) in this community. Some areas are older parcels being sold. Now, we want these new owners to comply with the new PZ regulations. However new owners are just reusing the same property and we are not requiring changes. Should we be able to get the new owner to comply with the PZ regulations?

J. Duffy: PZ applicants ask for many waivers and they are granted. The Town does not get anything in return for granting these waivers.

S. Buckley: Developers who have put together their plans have paid for them and are not as flexible to change/revise them later on in the process. The best practice is to ask for amendments up front rather than to keep having the applicant revise his plans. At a conceptual basic plan review; the developer may be more open to revising his plan to add detail.

D. Preece: It is important to present the applicant with design guidelines and standards.

D. Marshall: We have an Aesthetic Committee. The committee is an advisor to the Planning Board. They review architectural design and landscaping. We have more new developers and just a few older ones. There is nothing in our regulations for this committee to mandate. We have a Technical Review Committee (TRC) in our regulations represented by all department heads of the Town. The problems started when we adopted the PZ. When there is new development in the PZ, it is not a problem. The issue is when an existing business goes out-of-business and the replacement business is the same use. The members of the Board would like to have the replacement business enhance their site and landscaping.

S. Buckley: If you change the use from one zoning class to another, this is enough change for the Planning Board to review a revised site plan. To determine “enough change”, consider the impact to public health, safety, and welfare.

D. LeFevre: For a change in use, a new plan would need to be presented to the Planning Board. The ordinance defines change. If the site was approved before the PZ was adopted, and now vacant for one year (discontinued), any new use has to comply with the current zoning ordinances.

D. Marshall: For example, on Rte. 3 there was a consignment business that went out-of-business. Now the site is for a car dealership.

J. Duffy: This site was originally approved for auto sales, then approved for a Dunkin Donuts that did not get developed. It then became the consignment shop and now auto sales again. The Planning Board approved that they comply with the current PZ.

J. McHugh: Are there other things we can do for our community to encourage projects for beautification in the PZ?

D. Preece: Is there a close business relationship within the community?

Mike Sorel: RSA 674:35, have we met this RSA via TRC?

J. Duffy: TRC is our staff, not the Board.

M. Sorel: This is a fundamental statute.

S. Buckley: If you want to require all plans for conceptual consultations, then you must amend your current Town statutes.

J. Duffy: TRC is a committee the Board established to prepare for the Board(s). TRC is a requirement for all projects with engineering review.

D. Marshall: The developers prefer TRC to iron things out before they get to the Board(s).

D. LeFevre: For architectural design, does the Board have the authority for recommending changes in building materials?

S. Buckley: The Planning Board has the authority for the final look of the project.

Y. Nahikian: The Aesthetic Committee was originally working very well when it was at the same time as the TRC. Now that I have participated in the TRC and I am a member of the Planning Board, I can see how projects are progressing.

S. Buckley: The size and the scope of a project influence the outcome. There is a clear requirement from one zoning class to another and then should be considered for the site plan review.

Mike DiBitetto: Does the Planning Board have the ability to adopt a mandatory review process?

S. Buckley: The Planning Board can adopt criteria but not the ZBA.

#### **Variations and Changes to the Hardship Issue**

D. LeFevre: Distributed and presented an overview of variations and changes to the hardship issue. I strongly encourage you to review case studies (i.e. Simplex Technologies vs. Town of Newington, Rancourt vs. City of Manchester, Bacon vs. Town of Enfield). Determining hardship is based on: (1) zoning restriction(s) interferes with reasonable use of property, (2) no fair and substantial relationship exists, (3) will granting the variance(s) harm the private or public rights of others, (4) ZBA, and (5) is there something else reasonable that the applicant can do to meet the variance. There has been 15-20 Supreme Court variance cases in the last 8 years. If permitted use, the ZBA can't deny the applicant if they believe it is not feasible. Fore area variance analysis, consider the hardship of the applicant. The written Board notice of decision must be specific. The Supreme Court is requiring a higher standard of the ZBA knowledge of their ordinances.

#### **Conditional Approvals**

S. Buckley: Presented an overview of conditional approvals. Preliminary approvals were granted when I was on the Planning Board for a way for the developer to move forward. I recommend you continually provide a checklist for what the developer needs to bring to

the next meeting. The hardest part of conditional approvals is that the as built is different from the plan the Board approved. Some plans never get recorded due to conditions not being met. The Town should have a regulation that if conditions are not approved within a certain period of time and the plan is not recorded, and then the applicant must come before the Board.

D. Marshall: If permits are missing, then there are outstanding conditions and the Chairman will not sign the plan. Conditional approvals will be granted by the Board on a case-by-case basis depending on what is outstanding.

S. Buckley: If the final approval is pending minor revisions, then conditionally approve. If the changes are drastic, you may want the applicant to attend another meeting.

J. McHugh: Does a subsequent meeting with the developer enforce them to complete what they were required to? There is an enforcement issue with conditional approvals.

D. Marshall: In several cases, our engineer has gone out to the site for conditional approvals and the conditions are not being completed per the approved and signed plan.

S. Buckley: You need to develop a regulation for preconstruction meeting requirements.

D. Marshall: Yes, we do have preconstruction meetings here.

B. Ehlers: For conditional approvals, the time limit should be in our regulations?

S. Buckley: Yes, this should be in your regulations for both subdivisions and site plans.

D. LeFevre: The ZBA can grant conditional variances. You can't require an applicant do something every year. The ZBA grants a special exception, and then the applicant comes before the Planning Board. The ZBA should not be having landscaping criteria. Let each Board follow their guidelines.

D. Marshall: If the ZBA approves a variance and the Planning Board disagrees, do we have to comply?

D. LeFevre: If the ZBA approves a variance, the Planning Board cannot deny the plan if they disagree with the variance.

S. Buckley: It is a good idea to have a Planning Board member sit on the ZBA as an alternate to bridge the gap between Boards.

P. Rueppel: Isn't this a conflict of interest?

D. LeFevre: A dual member may have to step down from one Board.

S. Buckley: I recommend recording ZBA decisions in the name of the owner. This will follow the property title.

M. Sorel: There is a residential variance issue with a ZBA conditional approval. The minutes stated the applicant would complete their site within a certain timeframe. It is now 2 yrs later and the site is unfinished.

D. LeFevre: The Town regulations should have fielding permit within a certain time. If the applicant has engaged in a certain degree of work, than he should be vested and have the ability to complete the project. An example of this is the Wentworth by the Sea conditionally approval to be completed within a certain timeframe.

T. Murphy Roche: Regarding Mr. Sorel's comment, the ZBA does require certain timeframes.

D. LeFevre: At a public meeting, the ZBA should state the conditional approval that the site be completed within a certain timeframe. Per RSA 676:17, if the applicant does not comply with the condition and the Town prevails, the applicant must pay Town Attorney fees.

P. Rueppel: What about existing buildings that the owners have allowed to dilapidate?

S. Buckley: Per RSA 155 (b) or (e), it allows code enforcement to enforce the code for owners to maintain their buildings within certain standards. The City of Manchester, NH has such a code.

#### **Dealing with Abutters' Concerns**

S. Buckley: From being on a Planning Board, I respected abutters at hearings and valued their comments. They know their area and can educate the Board on details. If the applicant meets all the Planning Board and ZBA regulations, and the abutter just doesn't like project, this is not a reason for the Board to deny the applicant.

P. Rueppel: How about a project that started 4-5 yrs ago, and now the abutter is coming forward with concerns?

D. LeFevre: Per the regulations, abutters are to be heard. You need to determine if the issue is civil or municipal.

S. Buckley: A recommendation on civil issues is a neighborhood mediation group funded by a local entity.

J. McHugh: For neighborhood covenants within a residential subdivision, is there a rule of law or is it basically agreed upon?

S. Buckley: Cluster subdivisions have a Homeowner's Association. For most private covenants, the owner has bought into it and they are required to comply.

D. LeFevre: 55 and older community developments cannot rent out to younger tenants.

J. McHugh: Do subsequent owners of these communities have to comply?

T. Murphy Roche: Some deeds limit covenants to the owner noted in the deed and subsequent owners do not have to comply.

**Granting Variances for Lots without Required Frontage**

D. Marshall: There are many cases in front of the Planning Board where the person owns land with 350 ft of frontage. Now the owner wants to subdivide with one parcel having 100 ft frontage and the other parcel having 250 ft frontage.

T. Murphy Roche: Some of the ZBA members have the same concern.

D. LeFevre: Is there another method for the applicant to pursue subdividing the property? What is the purpose for the zoning ordinance for frontage (i.e. wetlands)? If the applicant's request is consistent with the neighborhood, this may be a good reason to grant the variance.

S. Buckley: Zoning is the common law right to use property.

**ADJOURNMENT**

Chairman D. Marshall declared the meeting adjourned at 9:10 PM.

Respectfully submitted,

Donna J. Fitzpatrick  
Planning Coordinator