

Moultonborough Planning Board
P.O. Box 139
Moultonborough, NH 03254

Regular Meeting and Public Hearing

January 9, 2013

Minutes

Present: Members: Tom Howard, Chair; Peter Jensen, Chris Maroun, Paul Punturieri,
Josh Bartlett; Russ Wakefield (Selectmen's Representative)
Alternates: Keith Nelson, Bob Goffredo
Excused: Member: Judy Ryerson
Alternate: Natt King
Staff Present: Town Planner, Bruce W. Woodruff; Administrative Assistant, Bonnie Whitney

I. Pledge of Allegiance

Mr. Howard called the regular meeting to order at 7:00 P.M and then appointed Mr. Nelson to sit on the board with full voting privileges in place of Judy Ryerson.

II. Approval of Minutes

Motion: Mr. Maroun moved to approve the Planning Board Minutes of December 12, 2012, as written, seconded by Mr. Jensen, carried unanimously with Mr. Nelson abstaining.

Motion: Mr. Maroun moved to approve the Planning Board Special Meeting Minutes of January 2, 2013, as amended, seconded by Mr. Punturieri, carried unanimously with Mr. Nelson abstaining.

III. New Submissions

IV. Boundary Line Adjustments

V. Hearings

Mr. Howard stated that this was a Public Hearing for the Proposed Zoning Amendments to be forwarded to Town Meeting. Mr. Howard opened the Public Hearing for the first proposal and asked that Mr. Woodruff give a synopsis of it.

Mr. Woodruff stated that he felt the actual language of each proposal should be read and then he would explain the amendment. He commented that the six amendments, starting with the first one, which is a quite extensive housekeeping amendment that spans the entire Zoning Ordinance, fixing and clarifying things, and bringing the ordinance into the future. He went on to comment that the Board worked on their 2012 Work Plan beginning around April. The Board then went to work on their Work Plan, which included all of the changes in May. So, the Board has worked for over six months on the six amendments that are up for Public Hearing this evening. Mr. Woodruff read the proposed language into the record, along with a detailed explanation of proposed amendment No. 1. Housekeeping/language clarification changes to the Zoning Ordinance.

1. Housekeeping/language clarification amendment- This proposal will amend Zoning Ordinance Article III, B, E, J; Article IV, F; Article VI, A, B, C, D, E, F, G; Article VII, B; and Article XI, C, D, G, by adding, removing, replacing, updating per statute, and clarifying language in order to correct, update,

clarify or bring in line with other ordinances and regulations. Please visit the Development Services Office or the Planning Board web page for a complete list of explanation of housekeeping/clarification changes.

Mr. Woodruff gave a brief overview of the proposed changes, stating a number of changes are proposed, including adding an amendment under Article 2 that adds clarifying language, updates outdated language, updates wording per the enabling state statutes and corrects errors throughout the Ordinance.

Mr. Howard opened the first Public Hearing listed on the agenda, and asked for board comments. There were none at this time.

Mr. Howard opened the floor for public input. Nancy Wright questioned the replacement of terms, Code Enforcement Officer with Town Planner. Mr. Woodruff stated that there had always been a CEO that the ordinance referred to. Now there is a Planner some of the references, where appropriate, should be replaced with Town Planner. Ms. Wright asked if the Planner used the Innovative Land Use Book as a reference. Mr. Woodruff stated that he uses the New Hampshire Planning and Land Use Regulation Book which has a statute (674:21) that allows the board to use Innovative Land Use tools, but that he does not have the book she referred to, nor does he use it.

Hollis Austin asked if it would be possible to identify the person that first brought the proposals to everyone's attention, suggesting that they needed to be dealt with. This would be for future reference in case he had any questions. He would like to be able to go back to the source and find what their original intentions were for suggesting the changes. Mr. Howard stated to the extent possible, they would do that. Mr. Hollis wanted to start with the first one. Mr. Howard stated that the first was a broad spectrum, and thought that each member had some input at some stage. There was not really any one person. Mr. Wakefield stated the same, that it was a collaborative effort of the entire board. Mr. Bartlett stated that was accurate with the exception of No. 3 shown on the agenda, relating to the Shoreland Protection Act. Mr. Austin commented that it seems the Town Planner essentially consolidated all of the issues and concerns of the various board members. Mr. Howard stated that the board went through the entire document, trying to take a look at it and give it a major look over.

Board members were in agreement with the proposed language as written, and there were no further questions from the public.

Motion: Mr. Wakefield moved that the Board accept the language as presented and to forward it to the Town Clerk for posting on the warrant, seconded by Mr. Punturieri, motion carried 7 to 0 in favor.

2. Updating soils & slopes info for calculation of lot size amendment– This proposal will amend Zoning Ordinance Article III, Minimum Lot Sizes Based on Soil and Slopes Table I by removing the outdated soil types and replacing with Soils Groups and Minimum lot sizing for septic loading in accord with NH Code of administrative Rules Env-Wq 1000 and soil/slope characteristics native to Moultonborough.

Mr. Howard opened the second Public Hearing listed on the agenda, and read the article language into the record.

Mr. Woodruff gave a brief overview of the proposed change stating it modernizes the information used to calculate new lot minimum sizes by removing the outdated soil types and replacing with Soils Groups and minimum lot sizing for septic loading in accord with the NH web-based soil survey and the NH Code of administrative Rules in concert with soil/slope characteristics native to Moultonborough. This change allows surveyors to more easily calculate the number of new lots a property owner may create when they want to subdivide.

Mr. Howard stated the board was prodded along by the surveyors, engineers and soil scientists, who had to deal with the outdated table. Mr. Bartlett commented that it was his understanding that this change did not make it more restrictive to subdivide a lot. Mr. Woodruff stated that was correct. The change makes the task easier for surveyors and engineers, and may affect the cost to subdivide, in a positive manner for the property owner.

Mr. Howard opened the floor for public input. Mr. Austin asked if this would address the issues of surface water runoff or permeability, and does it have any effect on what people may think are buildable lots versus non-buildable lots. Mr. Woodruff commented that slopes are in the calculations, and this does not take place of a septic design. Mr. Wakefield commented that soils are soils. The soils in the Town and the State haven't changed, only the designations. They still have the same characteristics and the new soil types still describe those same characteristics, permeability, depth to bedrock, etc. This allows surveyors to go about their job without having to do the conversion from the old soil types. Nothing else has changed.

Board members were in agreement with the proposed language as written, and there were no further questions from the public.

Motion: Mr. Nelson moved that the Board accept the language as presented and to forward it to the Town Clerk for posting on the warrant, seconded by Mr. Bartlett, motion carried 7 to 0 in favor.

3. Shoreland Protection Act: required by act revision change and strengthening change amendment

– This proposal will amend Zoning Article IV, G. by revising titles to reflect new name of act; clarifying that the Code Officer shall notify land owners of his visit in writing; adding clarifying language to the tree caliper section; deleting a sentence allowing an engineer to justify a greater than 30% impervious surface area; and increasing the point totals and impervious surface percentages to strengthen this section of the act back to the requirements of the 2008 version.

Mr. Howard opened the third Public Hearing listed on the agenda, and read the article language.

Mr. Woodruff gave a brief overview of the proposed change to the Comprehensive Shoreland Protection section of the ordinance by revising the titles to reflect the new name of the act to Shoreland Water Quality Protection Act; by clarifying that the Code Officer must notify land owners of a potential visit in writing; by adding clarifying language to the tree caliper section; by deleting a sentence allowing an engineer to justify a greater than 30% impervious surface area; and increasing the point totals and impervious surface percentages, all of which would become the Town's only more stringent parts of the enabling act, which is part of the ordinance by reference. These changes strengthen this section of the ordinance back to the requirements of the 2008 version of the state statute.

Mr. Howard commented that he thought the warrant language as written was a bit misleading. The last part of the language reads "...and increasing the point totals and impervious surface percentages to strengthen this section of the act back to the requirements of the 2008 version" which leads you to believe you may increase impervious surface. This should be clarified it is not increasing it, and actually reducing it. The board agreed to amend the language adding the word reducing. It will now read "...and increasing the point totals and *reducing* impervious surface percentages to strengthen this section of the act back to the requirements of the 2008 version". Another change recommended by the CEO for clarification was regarding the increase of tree and sapling scores in any 50 foot by 50 foot segment to 100 points. There is a reference in section V. (g) (3), which as written, refers to the RSA, which is 50 points. The reference should be deleted.

Mr. Woodruff stated that these were an oversight, and that the changes are necessary, and will require a second hearing.

Mr. Punturieri commented that the Conservation Commission has recommended going back to the more restrictive 2008 Shoreland Protection Act.

Mr. Howard opened the floor for public input. Mr. Austin had several comments and questions that ranged from: The original CSPA had a great deal of give and take, and taking of property rights. Who suggested this change? What is the type of vegetation, classifications, etc? Can you remove invasive species? If you are cutting in the buffer, what documentation is necessary for the Town?

Mr. Howard addressed Mr. Austin's question as to why this was proposed. He had brought it forward to the board. The Board was approached by a local contractor looking for consistency around the lake. Mr. Nelson stated that prior to the enactment in 2008 the Town has enacted their own shoreland protection ordinance. In 2008, the board adopted the State RSA. In 2010 the State reverted back and the Town didn't want that. The board is now trying to tighten back up what it was prior to the State pulling it out from under them in 2010.

Mr. Bartlett stated that he has a number of problems with this, the first being the name of it, Shoreland Water Quality Protection Act. It is not about water quality, but about views. Mr. Bartlett referred to a newspaper clipping quoting Joe Skiffington, a local contractor, who was supporting Jeb Bradley. It appeared to him that Mr. Skiffington had a different opinion in that article than he had when speaking with Mr. Howard. Mr. Bartlett feels that this proposal is an attack/assault on private property rights and the reasons are based on unproven theories, and voiced his strong opposition to this proposal.

Mr. Woodruff commented that a property owner is not required to provide documentation to the CEO if they are removing a dead, diseased or dying tree on their property. Mr. Nelson stated that the statute addresses this. Mr. Maroun commented that the State also addresses invasive species.

Board members were in agreement with the proposed language as amended, and there were no further questions from the public. As noted the change in language will require a second hearing.

Motion: Mr. Jensen moved to amended the language as proposed for Item #3 and to continue the Public Hearing to January 23, 2013, seconded by Mr. Punturieri, motion carried 7 to 0 in favor.

4. Revision of Table of Uses and addition of pertinent terms from Table of Uses to General Definition Section amendment- This proposal will amend Zoning Ordinance Article VI, Commercial Uses, by adding uses, clarifying uses and deleting outmoded uses; by changing some commercial uses to "not allowed" in the Residential/Agricultural, Commercial A and Village C district (such as Salt Storage, Junkyards, Snow Dumps, Waste Lagoons and Petroleum Bulk Plants); and by changing some uses to "allowed by special exception" in the Village C district; and amending Article XV, Definitions, to add the definition of those new uses added to the Table of Uses above.

Mr. Howard opened the fourth Public Hearing listed on the agenda, and read the article language.

Mr. Woodruff gave a brief overview of the proposed amendment stating it changes the Table of Permitted Uses by adding new uses, clarifying existing uses and deleting outmoded uses. It also changes some commercial uses to the "not allowed" category in the Residential/Agricultural, Commercial A and Village C districts (examples are Salt Storage, Junkyards, Snow Dumps, Waste Lagoons and Petroleum Bulk Plants); and changes some uses to the "allowed by special exception" category in the Village C district. This amendment also adds the definitions of those new uses added to the Table of Permitted Uses. These proposed changes to the Table are intended by the Planning Board to make the table more inclusive, modernize it and allow or disallow uses in the different zoning districts based on their compatibility with the existing uses, such as residential use, in the respective districts.

Mr. Howard opened the hearing for board comments. There were none at this time. Mr. Howard commented that there was a Citizen's Petition filed in 2012 to eliminate Special Exceptions for certain commercial uses in the Residential/Agricultural Zone, which did not pass, and that the board has attempted to address some of those concerns.

Mr. Howard opened the floor for public input. Eric Taussig commented that he had be the proponent for that Citizen's Petition. While this was an improvement, he does not think that it addresses the issues. He thinks that it is a Band-Aid approach.

Board members were in agreement with the proposed language, and there were no further comments or questions from the public

Motion: Mr. Nelson moved that the Board accept the language as amended and to forward it to the Town Clerk for posting on the warrant, seconded by Mr. Bartlett, carried 7 to 0 in favor.

5. Adding language requiring vesting for special exceptions and adding language codifying abandonment of special exceptions amendment - This proposal will amend Zoning Ordinance Article VI, Commercial Uses, E. Special Exceptions, by adding language that establishes a 2 year time period along with specific actions that must be taken in order to vest a granted special exception and provides that if the actions are not taken and the time period has passed, then the approval shall become void as if never granted. Additionally, language is added that provides for the abandonment of a special exception if the use ceases for a continuous period of 2 years or more or is changed to a use allowed by right in the district.

Mr. Howard opened the fifth Public Hearing listed on the agenda, and read the article language.

Mr. Woodruff gave a brief overview of the proposed change, stating it was significant. The amendment item (Article 6) proposed that would create vesting and abandonment rules for special exceptions by adding language that establishes a 2 year time period along with specific actions that must be taken in order to vest (give it the right to continue) a granted special exception. It also provides that if the actions are not taken and the time period has passed, then the approval becomes void as if never granted. Additionally, language is added that provides for the abandonment of a special exception if the use ceases for a continuous period of 2 years or more or is changed to a use allowed by right in the district. Currently, a special exception, once granted by the Zoning Board of Adjustment, runs with the land in perpetuity even if conditions or land ownership change through the years.

It was noted the CEO had commented that the in the definition of abandonment it states "... property has been vacant for 12 months..." and the new language proposed for Article VI, E, states "... for a continued period of two (2) years or more..." He questioned if the 12 was an oversight and should be changed to two years to be consistent with the proposed language. Board members were in agreement with this and that the reference should be two years.

Mr. Howard opened the hearing for board comments. Mr. Bartlett stated that he felt this was a huge step in the right direction and was very much in favor of it. Mr. Punturieri agreed with Mr. Bartlett.

Mr. Howard opened the floor for public input. Mr. Taussig stated that he thought two years was very generous and that it should only be one year. Another issue of Mr. Taussig's is that the granting of a special exception runs with the land in perpetuity. He commented that the granting of special exception should only run with the current owner or with the applicant, and should not run with the land. He suggested that the board add this in next year.

Mr. Woodruff strongly disagrees with any new special exception being tagged to owners.

Mr. Wakefield commented that he felt that restriction would lead to law suits as a taking.

Motion: Mr. Jensen moved that the Board accept the language as presented and to forward it to the Town Clerk for posting on the warrant, seconded by Mr. Wakefield, motion carried 7 to 0 in favor.

6. Adding language/revising language regarding nonconforming uses, structures and lots amendment– This proposal will amend Zoning Ordinance Article VII, Miscellaneous, C, D, E, and F, by adding a new section clarifying rights and definitions of nonconforming lots; by revising the section on nonconforming uses to clarify that no nonconforming use may be expanded except for single family structures which may be expanded up to 20% and that the time period for abandonment is increased from one to two years.

Mr. Howard opened the sixth Public Hearing listed on the agenda, and read the article language.

Mr. Woodruff gave a brief overview of the proposed change. The last proposal would amend Article VII, Miscellaneous, C, D, E, and F, to define nonconforming lots, uses and structures with separate requirements for each by adding a new section clarifying the rights and definitions of nonconforming lots; by revising the section on nonconforming uses to clarify that no nonconforming use may be expanded except for single family structures, which may be expanded up to 20%. It also revises the time period for abandonment of nonconforming uses, which is increased from one to two years. Finally, the amendment adds language that clarifies a nonconforming structure's status, ability to be restored, expanded or moved. The first change's effect would be to strengthen the intent of the ordinance to eventually phase out uses in districts that are not compatible with the predominant land use, with the exception of any residential use. The second effect of this amendment would be expand the right of nonconforming uses to continue by increasing the amount of time that use could be dormant before being deemed permanently abandoned. Finally, the last effect would be that of clarification of the specific rights and restrictions that nonconforming uses have for ease of understanding by property owners and the Code Enforcement Officer. In other words, gray areas open to interpretation are reduced by this new language.

Mr. Howard opened the hearing for board comments. There was none at this time.

Mr. Howard opened the floor for public input. Mr. Taussig questioned why this was being expanded to 20%. Mr. Woodruff noted the CEO had questioned if the 20% was gross floor area, which could take two floors into the calculation, or is it 20% footprint? After a brief discussion it was the decision of the board that for clarification, it was 20% of the footprint.

Motion: Mr. Bartlett moved that the Board accept the language as amended and to forward it to the Town Clerk for posting on the warrant, seconded by Mr. Wakefield.

Mr. Jensen noted his concern with the change to footprint. He stated that he had participated in the conversations during work sessions and he did not agree with the change to footprint. He felt that this was allowing a 20% expansion to go into the setbacks.

Mr. Bartlett withdrew his motion on the floor and Mr. Wakefield withdrew his second.

This issue was discussed at length. It was noted that all other requirements of the ordinance must be met. The expansion could not violate any other setback or the height requirement.

Mr. Wakefield questioned how many times is allowed. Mr. Woodruff stated only once for 20%.

Mr. Austin once again asked who proposed changes 5 and 6. He would like to have someone step up and take ownership of the proposals so that he might question them directly as to their intentions and why they proposed them. Mr. Woodruff replied that the board had discussed these at length back in April, they were placed on the 2012 Work Plan and that once the board had agreed on the Work Plan, he worked on the changes for the board. There was not any one individual who proposed the changes. It was a collaborative effort of the entire board.

In the end board members collectively decided they would retain the existing proposed language of D (1), which is "...up to twenty (20) percent of its gross habitable floor space..."

Motion: Mr. Nelson moved that the Board accept the language as amended and to forward it to the Town Clerk for posting on the warrant, seconded by Mr. Bartlett, motion carried 7 to 0 in favor.

After further discussion, it was noted that only one hearing had a substantial change (3. Shoreland Protection Act: required by act revision change and strengthening change amendment) and was continued to Wednesday, January 23, 2013 at 7 PM with a snow date of Monday, January 28, 2013.

Mr. Howard closed the Public Hearings at this time.

VI. Informal Discussions

VII. Unfinished Business

VII. Other Business/Correspondence

1. Discussion on 2013 Work Plan: Mr. Woodruff asked that the board members review the draft 2013 Work Plan for the next meeting. He stated that there were 8 items listed on it and he felt that was too many for the upcoming year, as the board needs to begin working on updating the Master Plan. He commented the Master Plan Implementation Committee (MPIC) had met on Monday. Mr. Punturieri stated that the MPIC would like to get a list of goals that were obtainable, not just statements. They noted the importance of listening sessions.

IX. Committee Reports

X. Adjournment: Mr. Punturieri made the motion to adjourn at 9:32 PM, seconded by Mr. Wakefield, carried unanimously.

Respectfully Submitted,
Bonnie L. Whitney
Administrative Assistant