

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

**Public Hearing**

**December 17, 2014**

**Minutes**

**Present:** Members: Josh Bartlett, Chair; Rich Kumpf, Vice Chair, Scott Bartlett, Kevin Quinlan, Ed Charest; Russ Wakefield (Selectmen's Representative)

**Excused:** Member: Joanne Farnham  
Alternate: Kathi Margeson

**Staff Present:** Town Planner, Bruce W. Woodruff; Administrative Assistant, Bonnie Whitney

The Chairman, Mr. J. Bartlett, called the Public Hearing to order at 7:00 PM and led the Pledge of Allegiance. There were thirteen (13) members of the public in attendance for the Public Hearing.

The Chair stated that this was a Public Hearing for the Proposed Zoning Amendments, giving a brief protocol for this evenings meeting.

The Chair opened the Public Hearing for the first proposal and read the proposed language into the record, along with the explanation of proposed amendment No. 1.

**1. Removal of word "Subdivision"** - This proposal will amend *Zoning Ordinance Article III, General Provisions* by removing the reference for subdivision approval for a second dwelling on one lot and clarifying that the review and approval by the Planning Board involves the applicant certifying that the lot has the required unit density based on soils groups and slopes of the land. The clarification in wording does not change the process that the Board has used and will now meet the wording and intent of Warrant Article 2, passed by the voters at the 2001 Town Meeting. Refer to p. 13 of the Annual Town Report for the year ending December 31, 2001.

The Chair opened the public input portion of the hearing. Noting none he then closed the public input for proposed Zoning Amendment #1.

The Chair then asked for board comments. Board members were in agreement with the proposed language as written, and there were no further comments or questions.

**Motion:** Mr. Charest 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. Kumpf, motion carried 6 to 0 in favor.

**2. Nonconforming Uses & Structures** – This proposal will amend *Zoning Ordinance Article VII (D), Nonconforming Uses & (E) Nonconforming Structures*, by removing language that imposes a percentage limitation on the expansion of nonconforming residential uses, when in fact there are no nonconforming residential uses in any zoning district because such uses are allowed in every zone. The change also clarifies that nonconforming residential structures (because of changes in dimensional requirement like setbacks) may be expanded within the setbacks within specific guidelines and to certain limitations as laid out in the ordinance section.

The Chair opened the public input portion of the hearing. Noting none he then closed the public input for proposed Zoning Amendment #2.

The Chair then asked for board comments. Board members were in agreement with the proposed language as written, and there were no further comments or questions.

**Motion:** Mr. Kumpf 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. S. Bartlett, motion carried 6 to 0 in favor.

**3. Temporary Use: tag, barn, garage** – This proposal will amend *Zoning Ordinance Article XI (H) (2)* by removing “tag, barn, garage” and adding special event to the term “commercial temporary uses”. The change clarifies that special events are, and tag, barn and garage sales are not commercial temporary uses. Finally, language has been added that allows a commercial temporary use a longer time to occur, but only for once a year. The wording being added is “or up to ten (10) consecutive days on a one-time basis annually”.

The Chair opened the public input portion of the hearing. Noting none he then closed the public input for proposed Zoning Amendment #3.

The Chair then asked for board comments. Board members were in agreement with the proposed language as written, and there were no further comments or questions.

**Motion:** Mr. S. Bartlett 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. Quinlan, motion carried 6 to 0 in favor.

**4. Addition to General Definitions Section** - This proposal will amend *Zoning Ordinance Article XV, Definitions* by adding a new definition for bedroom as follows: “A room furnished with a bed and intended primarily for sleeping, unless otherwise specified by other regulations contained in this title or other local regulations.” The Code & Health Officer is given a solid statutory basis for permit review and code enforcement by adding a definition that is based on wording from NH RSA 485-A: 2, XX, where there has been no official definition in the past.

The Chair opened the public input portion of the hearing. A question was raised as to what constituted a bed. Would a pull out sofa or Murphy bed be considered as a bed? One comment was to identify a bedroom if there was a closet in the room. Mr. Wakefield noted the proposed definition included the language “intended primarily for sleeping” and felt that addressed any concerns.

Hearing no further comments, the Chair then closed the public input for proposed Zoning Amendment #4.

The Chair then asked for board comments. Board members were in agreement with the proposed language as written, and there were no further comments or questions.

**Motion:** Mr. Charest 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. Kumpf, motion carried 6 to 0 in favor.

**5. Amendment to General Definitions Section** - This proposal will amend *Zoning Ordinance Article XV, Definitions, Section 1503 General Definitions, D: Dwelling* by adding a new sub-term, “Seasonal, recreational or occasional use dwelling”, and further clarifies that if said dwelling types are rented on a weekend, weekly, monthly or seasonal basis, there is an occupancy limit. The limit is defined as either 12 occupants or no more than the approved design shown on the NH DES septic construction and operational approvals for the lot based on three (3) persons per bedroom as indicated on the aforementioned approvals (or one (1) person per 50 gallons/day). The amendment also clarifies that there is no maximum occupancy for these types of rentals if the property is served by the Bay Sewer District system.

The Chair opened the public input portion of the hearing.

Rob Wichland of Bayside Rentals commented that he was present at the work session that the board discussed this proposal. He stated that he was not against an amendment to work on the concerns that have been raised, but feels the board should take additional time to study this. All were in agreement that they are concerned with the quality of the lake, but felt that the proposal was not equitable for all properties. The concerns relating to septic could apply to all properties in town, not just the lakefront homes. Mr. Wichland asked why restrict the limit to rental properties? Why not apply this for all properties in town. The Chair gave a little background for clarification on this concern. One suggested solution was to have every septic pump out logged and set a maximum number per year that would be used that shows a system had clearly failed and condemn the property until it is repaired. Mr. Wichland agreed that there should be some record for maintaining septic systems.

Steve Banks commented that he thought the board was on a slippery slope as a town to single out a rental property verses an owner property.

Mark Borrin commented that he was in agreement with the statements made by both Mr. Wichland and Mr. Banks. If everyone is concerned with the quality of the lakes, then this should be done on a global basis and not selecting out certain individuals.

Eric Taussig spoke in favor of the proposed amendment, noting that several of the homes in his area are investment properties where they are rented every week throughout the summer season with 10-20 people in these houses. He commended the board for trying to address this problem.

Hearing no further comments, the Chair then closed the public input for proposed Zoning Amendment #5.

Mr. Woodruff gave a brief overview of all five proposed amendments. He noted that he had checked with legal counsel as to the wording on how the amendments are constructed, whether they have a statutory basis in New Hampshire Statute. Counsel replied that all five amendments were okay. The Planner spoke to Amendment #5, stating the statutory basis for the wording comes from Title III, Towns, Cities, Village Districts, and Unincorporated Places, Chapter 48-A, Housing Standards, specifically from Section 48-A:11 Minimum Standards; Barring the Use or Occupancy; Violations and Punishment. - Any municipality may (by ordinance adopted by its governing body): I. Prescribe minimum standards for the use and occupancy of dwellings throughout the municipality; II. Prevent the use or occupancy of any dwelling which is injurious to the public health, safety, or welfare. He stated that was the statutory basis for Amendment 5. Mr. Woodruff went on to read the Code Enforcement Officer said with regard to this particular Amendment 5. This was an e-mail sent to the Planner on November 4<sup>th</sup>. "Here are the reasons I wanted to do something about the overloading complaints of the houses we get. Hope this is what you were looking for, rewrite as you need. My main reason for bringing forward the idea of limiting the number of people using a house was from the anonymous complaints of excessive overnight loading in rental units. This brought up the concern of life safety and egress. If they are using a room designed as a bedroom they have a second egress designed for emergency escape, but even that is a concern where there might be 6-8 people in the room And we all know Mom and Dad are not sleeping with 6 other adults, it is usually kids in these rooms. There is also a concern that rooms being used might not be designed as bedrooms and the proper smoke detection and egress. The second concern was the septic overloading and the issues that can arise from that. Sincerely, Donald E. Cahoon"

A majority of the members did not see a problem with having this apply to any property in town. Another concern with the amendment was the lack of a definition for persons. Did 12 include adults, children, or infants? Some of the members felt that as proposed, the amendment was discriminatory to rental units. A comment was made that this will never be perfect.

**Motion:** Mr. Quinlan moved to table Item #5 for further study, seconded by Mr. Kumpf with the caveat for further input and discussion by board members.

Some members would like to look at it for town wide, one felt that it was town wide, another agreed that it was town wide for rentals, but why not apply it to all properties.

The Chair stated there was a motion on the floor and called for a vote, 4 Ayes (Kumpf, Quinlan, Charest, J. Bartlett) and 2 Nays (Wakefield, S. Bartlett).

The Chair commented that tabling this amendment was not the best solution for the lake. He stated they would like to craft the best language they can. They recognize that those who are renting properties in town are a major economic benefit for the town. On the other hand, the only real asset we have in this town that is so far ahead of everything else is the quality of the lake, whether it is Squam or Winnepesaukee or any of the others. The amendment was tabled until such time that it can be better crafted.

The Chair commented that if anyone sees a problem the town wants to know about it. It's not a case of ratting on your neighbor. It's a case of protecting the most valuable asset we have here in town. If you have a septic system on the property next to you that has to be pumped every weekend we encourage you to notify the town.

It was noted for the record that there will not be a second public hearing on January 14, 2015 for proposed zoning amendments as the board has concluded the public hearing this evening. They unanimously voted to forward proposed amendments 1, 2, 3 & 4, as written, to the Board of Selectmen to be included on the warrant for March 2015, and to table amendment 5 for further review and study.

The Chair closed the Public Hearings at this time.

**X. Adjournment:** Mr. Wakefield made the motion to adjourn at 7:56 PM, seconded by Mr. Charest, carried unanimously.

Respectfully Submitted,  
Bonnie L. Whitney  
Administrative Assistant