



Meeting Minutes
North Hampton Planning Board
Thursday, February 4, 2010 at 7:00pm
Mary Herbert Conference Room

These minutes were prepared as a reasonable summary of the essential content of this meeting, not as a transcription.

Members present: Phil Wilson, Chair; Laurel Pohl, Barbara Kohl, and Tom McManus,

Members absent: Shep Kroner, Vice Chair, Joseph Arena, and Michael Coutu, Selectmen's Representative.

Alternates present: None

Others present: Brian Groth, RPC Circuit Rider, and Wendy Chase, Recording Secretary

Mr. Wilson convened the Meeting at 7:07pm, and noted for the record that the agenda was properly posted and that there was a quorum.

Mr. Stanton, Chair of the ZBA, without objection from the Board, made an announcement inviting the Board and public to join the ZBA Tuesday, February 9, 2010 at the Town Hall at 7:00pm for a forum on ZBA issues. Topics will include the quasi judicial nature of the ZBA; the role of evidence; the variance criteria that was enacted January 1, 2010.

Mr. Wilson commented that the Planning Board is also a quasi judicial Board when acting on Planning Board Applications. He said that the Board has a Legislative function when dealing with Public Hearings on proposed Warrant Articles, and an executive function. He encouraged the members to attend because the topics that will be addressed are issues the Planning Board also deals with as a Board.

I. Old Business

09:12 – Thomas & Cheryl Nowak, 64 South Road. The Applicants have applied for a Conditional Use Permit under Article IV, Section 409.10 to construct a roadway to access their backland. Property owners: Thomas and Cheryl Nowak, property location: 64 South Road, M/L 008-145-001, zoning district R-1. This case is continued from the December 3, 2009 Meeting.

In attendance for this application:
Thomas Nowak, Owner/Applicant

Mr. Nowak announced that he has withdrawn his Planning Board Application. He explained that he found a feasible way to access his back lot that would not require Planning Board approval.

Mr. Nowak thanked that Board for their input, which he said guided him in the right direction. He will be in contact with the Building Inspector.

II. New Business

First Public Hearing on the following adoption or amendments to the Zoning Ordinance, and proposed Warrant Articles:

Proposed CIP Warrant Article – The Board reviewed the revised CIP Warrant Article that reflected the changes made at the January 21, 2010 Meeting.

Ms. Pohl questioned why the Town Administrator’s “role” was not mentioned in the Warrant Article.

Mr. Wilson said that the Board discussed having the Town Administrator and his equivalent on the School Board, to serve on the Committee as staff support. The staff support would take minutes, gather data, and respond to the requests of the Committee; they would not be voting members.

Mr. Wilson suggested the following clause at the end of the CIP Warrant Article: *Staff support for the Committee shall consist of the Town Administrator and a similar representative from the School Board, and they shall be responsible for ensuring that the Committee receives all information required to fulfill its roles in a timely manner.* Mr. McManus suggested replace the word *roles* with *duties*. The Board agreed.

Mr. Wilson opened the Public Hearing at 7:24pm.

Mr. Stanton commented that sometimes things need to be “spelled out”, and if there is a need for support it may need to be specified in the Article.

Ms. Kohl questioned whether or not the Board can compel the School Board to comply, and Mr. Wilson responded by saying that the Legislative Body can compel the School Board to comply.

Ms. Pohl referenced RSA 674:7 that states, that the CIP Committee has the authority to do what they need to do that they deem appropriate, and they do this with the **School Board** and other Boards.

Mr. Wilson closed the Public Hearing at 7:30pm.

Mr. Wilson read the proposed new clause: *Staff support for the Committee shall consist of the Town Administrator and a similar representative from the School Board, and they shall be responsible for ensuring that the Committee receives all information required to fulfill its duties in a timely manner.*

Ms. Pohl moved add Mr. McManus seconded the motion to add the new paragraph as read by Mr. Wilson, into the CIP Warrant Article.

The vote was unanimous in favor of the motion (4-0).

Ms. Pohl moved and Mr. McManus seconded the motion to take the amended CIP Warrant Article to a second public hearing on March 4, 2010.

The vote was unanimous in favor of the motion (4-0).

Proposed amendment to Article IV, Section 406.2.2 (frontage requirement)

Mr. McManus explained that it was decided at the January 21, 2010 meeting that he and Mr. Groth were going to work on amending Section 406.2.2. Mr. Groth recommended replacing the word “structure” with “lots” in the sentence *all such structures must, however, have 100-feet of frontage*. The Board agreed to that amendment.

Mr. McManus said that he understands how Attorney Donahue came up with the suggestion of 40-feet for the lots using the logic of the “back lot” subdivision, but after reading through the other restrictions regarding the “back lot” subdivision he thought it might not be completely applicable to the use.

Mr. McManus said that it was his understanding that the Board came up with the amount of 100-feet while working on the workforce housing ordinance, which requires 100-feet of frontage on a 1/3 of an acre. He opined that it was not the intent of the Board to make it more difficult for owners of such lots to utilize their property.

Mr. Wilson suggested that the Board consider creating a “scale” to determine frontage, such as requiring 100-feet of frontage on a 1-acre lot and draw a “scale” between that. He said that putting in 100-feet of frontage was done for good reason. He said that he was not sure if there was a logical solution to the problem, but in order to maintain the kind of distribution of development of houses, there has to be some limits.

Ms. Kohl opined that the 100-foot requirement is not unreasonable, and the property owner always has the option of requesting a variance from the ZBA.

Mr. Wilson said that the Board has no idea the inventory of the lots of record in Town that would be affected by Section 406.2.2, and there is no practical way to get the information.

Mr. Groth opined that whatever the Board decides there should be a clear reason for what the frontage requirement is.

Mr. Groth said that there is logic behind creating frontage requirements, and the main two reasons are (1) provide a structured plotting of development and (2) to provide access. He said that since the lots already there, he would argue that the reason for frontage on these lots is “access”.

Mr. McManus questioned how the new variance law would affect decisions on cases requiring frontage variances on “lots of record”.

Mr. Wilson opened the Public Hearing at 7:54pm.

Mr. Stanton said that it is hard to determine how the new law would affect variances on “lots of record” because the ZBA has not had any such cases before them. He opined that it may be harder for “area” variances to get approved, because there was one “hardship” criteria under the Boccia analysis that was fairly easy to prove, and as of January 1, 2010 it no longer exists.

Mr. Wilson said that the variance test is a complicated thing to deal with because there is one set of criteria under "A" and if the Applicant does not meet that set of criteria, then the Applicant must meet the set of criteria under "B"; both "A" and "B" deals with the uniqueness of the property in its setting, but "B" also states that what is proposed has to be a reasonable use of the property. He opined that it would not necessarily be too difficult to receive an approved variance.

Mr. Wilson closed the Public Hearing at 8:06pm.

Mr. McManus moved and Ms. Kohl seconded the motion to forward the proposed amendment to Article IV, Section 406.2.2 to the 1st Public Hearing on March 4, 2010. The vote was unanimous in favor of the motion (4-0).

Proposed amendment to Article IV, Section 405

Mr. Wilson said that Dr. Arena has expressed that the word "church" has been associated with the Christian Religion for a long time and it should be defined that way in the Definitions. Mr. Wilson said that "church" has been used in many ways, such as institutionalized religion. He said that he looked at the IRS website and came upon a brochure the US Constitution cannot restrict religion in any way so the IRS determines whether an organization is a religion or not and once it qualifies as a religion that they don't have to file a tax return. He that there are different religions and suggested that the Board consider using the IRS standards regarding religious organizations. That way the Board does not have to try and define what is a church or a religious institution. He suggested replacing the word church in the R1 & R2 to "place of worship" and add "place of worship" under permitted uses in the I-B/R zoning district, and to also add a definition of place of worship to read: *A venue for any religious group that can provide written documentation that the U.S. Internal Revenue Service has determined that it qualifies for tax exempt status as a religious organization.*

Mr. Wilson opened the ph at 8:16pm

Mr. Stanton asked if the Planning Board would review such things as parking, he said that the Building Inspector would deal with health and safety.

Mr. Wilson said that if there is a change of use involved it would need planning Board approval. The Planning Board at that time can require a full site plan from the Applicant.

Mr. Stanton said that "parking" was a big concern when dealing with the variance to allow a church in the I-B/R district.

Mr. Wilson closed the Public Hearing at 8:22pm.

Ms. Pohl moved and Ms. Kohl seconded the motion to bring to the first Public Hearing on March 4, 2010 the proposed amendment to Article IV, Section 405 – permitted uses to replace the word "church" under the permitted uses in the R-1 and R-2 zoning districts with the words "places of worship", and to add "places of worship" under permitted uses in the I-B/R zoning district and to add a new definition, in alpha sequence, of "place of worship" in Section 302 to read: *Place of Worship: A venue for any religious group that can provide written documentation that the U.S. Internal Revenue Service has determined that it qualifies for tax exempt status as a religious organization.*

Disclaimer – these minutes are prepared by the Recording Secretary within five (5) business days as required by NH RSA 91A:2,II. They will not be finalized until approved by majority vote of the Planning Board.

The vote was unanimous in favor of the motion (4-0).

It was determined that the first Public Hearing need to be held prior to the March 4, 2010 Meeting to meet the required deadline dates established by RSA 675:3;40:13,II-a.c.

Ms. Pohl moved and Ms. Kohl seconded the motion to reschedule their February 18, 2010 Work Session to February 25, 2010 at 7:00pm in the Mary Herbert Conference room to accommodate the deadline date for the first public hearing on proposed amendments or adoptions of zoning ordinances.

The vote was unanimous in favor of the motion (4-0).

Ms. Pohl moved and Ms. Kohl seconded the motion to amend the prior motion on the proposed amendment to Section 406.2.2 and to Section 405 to change the date from March 4, 2010 to February 25, 2010 for the first Public Hearing.

The vote was unanimous in favor of the motion (4-0).

Proposed Small Wind Energy Systems Ordinance

Mr. Groth presented a new draft on the proposed Small Wind Energy Systems Ordinance.

The Board went through each of the sections and made the following changes:

- A change to a portion of the definition of Wind Generator *components mounted on the tower*.
- The ordinance is designed like the conditional use process for signs and that the Building Inspector can issue a building permit if the application complies with the ordinance if not it needs Planning Board approval.
- Language was changed in Section D. 1. – Setbacks
- Setback requirement from property lines of abutting property and utility lines was changed from 1.1 to 1.25.
- The Board decided to only allow monopole structures because they are engineered to collapse rather than fall. It was added under Section D.2.
- The Board agreed with the sound level of 60 decibels because “normal speech” is fewer than 60 decibels. Provision C.2.xi states that the sound level analysis is prepared by the wind generator manufacturer or qualified engineer.
- The Section D.9.b – color, was changed to be painted with a non-reflective, unobtrusive color that blends in with the surrounding environment.
- Section 5 from the previous draft is added to the new draft regarding providing a form of surety under the abandonment clause.

Ms. Kohl moved and Ms. Pohl seconded the motion to include the surety paragraph into proposed Ordinance with the statement that the Building Inspector, with the approval of the Planning Board, may require the applicant to provide a form of surety.

The vote passed (3 in favor 1 opposed and 0 abstentions). Mr. McManus opposed.

Ms. Pohl suggested limiting the amount of energy systems per lot.

Mr. Wilson suggested added to the limitations section that The number of small wind energy systems shall be limited to one (1) per lot of record, and the Planning Board shall have authority to grant Conditional Use Permits for additional systems on a single lot of record if the Applicant demonstrates that (1) the additional system or systems does not create a nuisance for abutters, (2) the additional system or systems are not being installed for commercial purposes, (3) the additional system or systems do not present a hazard to public health and safety, and (4) the additional system or systems not have a detrimental visual impact.

The Board agreed with Mr. Wilson's suggestion.

Mr. Groth said that he would make the proposed changes and email it to the members for their review.

**Ms. Kohl moved and Ms. Pohl seconded the motion to take the proposed Small Wind Energy Ordinance to the first Public Hearing on February 25, 2010.
The vote was unanimous in favor of the motion (4-0).**

Mr. Wilson informed the members that Mr. Glenn Greenwood of the Rockingham Planning Commission said that \$9,400.00 will be available in matching grant funds for the North Hampton Planning Board to revise the Master Plan during FY2011. He informed the Town Administrator of this.

The Board adjourned the meeting at 9:30pm.

Respectfully submitted,

Wendy V. Chase
Recording Secretary

Approved 2/25/2010