

WOLFEBORO PLANNING BOARD
November 17, 2009
PUBLIC HEARING MINUTES

Members Present: Kathy Barnard, Chairman, Stacie Jo Pope, Vice-Chairman, Kristi Ginter, Selectmen's Representative, Chris Franson, Jennifer Haskell, Richard O'Donnell, Fae Moore, Members, Dave Alessandrini, Alternate.

Member Absent: Steve Buck, Alternate.

Staff Present: Rob Houseman, Director of Planning & Development, Lee Ann Keathley, Secretary.

Chairman Barnard opened the meeting at 7:01 PM.

PUBLIC HEARINGS

➤ **Section 175:175**

Change in definition of Boardinghouse

Addition of definition for Dormitory & Permitted Uses

Rob Houseman reviewed the proposed changes to Section 175:175, see attached presentation.

Kathy Barnard stated the ZBA discussed the issue at a meeting in August 2009; noting an application was submitted by two Green Street residents. As a result, the ZBA requested the Planning Board to review Section 175:175 and add a definition for dormitory to the definition section of the Zoning Ordinance. She stated the ZBA's concern is that a dormitory is considered a commercial use and allowed without Site Plan Review or Special Exception review and approval; requesting that dormitories be addressed in the same manner that Bed & Breakfasts are addressed. She stated the Planning Board felt that by adding the definition Brewster Academy could be singled out and the change could affect the entire community (boarding houses and summer camps); noting the Board does not want to see any adverse impact. She stated the Planning Board initially decided to not take action however, further discussions led to the proposed definition.

Chairman Barnard opened the public hearing.

David Booth, ZBA Member, stated he is speaking for himself and not as a member of the ZBA. He stated he is in favor of the proposed definition however, requested the Planning Board to consider making it a permitted use by Special Exception in so that an application for a dormitory would meet the criteria outlined by the ZBA related to site suitability, immediate neighborhood impact, undue nuisance or serious hazard, immediate neighborhood integrity, availability of public services and facilities, impact of property values and that the proposed use meets the spirit and intent of the Master Plan. He recommended Special Exception review by the ZBA first and Site Plan Review by the Planning Board second.

Mike Hodder, ZBA Alternate, stated he is in favor of Mr. Booth's request; noting that leaving it as a permitted use in the GR1 District without Special Exception review does not address the abutter's concerns and would change the character of Green Street from residential to commercial.

Steve McGuire, ZBA Member & private citizen, read his statement into the record, see attached.

Kathy Barnard clarified that Site Plan Review would include a public hearing process.

Steve McGuire agreed and stated however, the proposed definition would not allow for the Special Exception process and review of criteria noted in Mr. Booth's testimony.

Peter Batchelder, Green Street, stated he is in favor of controlling the growth of dormitories however, Brewster Academy cannot be controlled by a broad definition; noting that anything allowing more than two students would be taken advantage of by Brewster Academy. He stated Brewster Academy's Master Plan includes putting more dorms at the end of Green Street; noting they will take a residential street and destroy it if they buy one more house. He stated he wants to prevent Brewster Academy from buying anymore houses on Green Street and preserve the residential character. He recommended further discussion and scheduling a second public hearing. He stated he has been fighting Brewster Academy for 11 years.

There being no further questions or comments, Chairman Barnard closed the public hearing.

Kathy Barnard stated the discussion during the public hearing focused on Brewster Academy; noting the Board must be careful of spot zoning.

Chris Franson stated she feels Brewster Academy is being singled out and when the Board discussed the definition of dormitory, the Board defined it in a broader way to not just include Brewster Academy. She expressed concern that if application before the ZBA is required first, then a dormitory may never meet the criteria and then Brewster Academy could not develop to its capacity.

Kristi Ginter stated she is in favor of the definition as proposed.

Kathy Barnard stated the Board, through its Site Plan Review process, would still review the same issues such as impact to the neighborhood; noting it is not the intent of the Planning Board to single out Brewster Academy.

Richard O'Donnell stated that without an inventory, Brewster Academy would be most affected by the proposed definition. He stated the school is expanding and perhaps Brewster Academy needs to do more planning regarding future population and housing needs. He stated the proposed language does not single out Brewster Academy.

Kathy Barnard stated she struggles with the Special Exception v. Site Plan Review process.

The Board tabled discussion of the proposed zoning changes to Section 175:175 until 12/15/09.

➤ **Boathouse Ordinance**

Rob Houseman reviewed the proposed change to the Boathouse Ordinance; noting the change reflects clarification to ensure that the construction of a boathouse is a subordinate, accessory structure to a dwelling (see attached presentation).

Chairman Kathy Barnard opened the public hearing.

Mike Hodder recommended changing the spelling of "principle" to "principal".

There being no further questions or comments, Chairman Barnard closed the public hearing.

Chris Franson questioned whether the principal structure has to be constructed first.

Rob Houseman replied no, the permits for construction of a primary dwelling and boathouse could be concurrent with each other.

It was moved by Chris Franson and seconded by Jennifer Haskell to move Boathouse Ordinance to the 2010 Town Warrant. Kathy Barnard, Stacie Jo Pope, Kristi Ginter, Chris Franson, Jennifer Haskell, Richard O'Donnell voted in favor. Fae Moore opposed. The motion passed.

➤ **Wetlands Ordinance**

Rob Houseman reviewed the proposed changes to the Wetlands Ordinance, see attached presentation.

Roger Murray III, representing Clint & Cynthia Johnson, submitted their statement expressing opposition to the amendment, see attached presentation. He stated any present application must address the four criteria outlined under 175-8.A.1; reviewing said criteria which addresses location. He also stated that an application must also address criteria outlined under 175-7.B.1 & 2; reviewing said criteria addresses impact. He reviewed two NH Supreme Court cases; Cherry v. Town of Hampton Falls (2004) and Continental Paving v. Town of Litchfield (2009). He stated the proposed amendment would make compliance with the applicable conditions set forth in 175-8.A however, questioned the applicable conditions. He stated the applicable conditions are not defined therefore the proposed amendment creates confusion. He questioned whether the criteria would have to be met for a parking lot, commercial building or commercial use. He stated his client believes the four criteria should apply to the construction of a single family dwelling within the buffer zone on a lot created prior to March 2003. He stated the criteria is important and should not be eliminated the amendment does not make clear what restrictions are applied to. He requested the Board reconsider the proposed amendment.

Rob Houseman stated Dan Coons, Conservation Commission Chairman, questioned whether the Board intended to alter the way the Board treats pre-2003 lots. He stated that from his perspective, the Board is not proposing to alter the current process.

Roger Murray III stated the court systems found the criteria in 175-8.A.1 did apply to pre-2003 lots; noting the proposed amendment goes beyond affecting paragraph 4 in such because nowhere does it say affecting what the applicable conditions are and to what they apply.

The Board tabled discussion of the proposed amendment to the Wetlands Ordinance until 12/15/09.

➤ **Small Wind Energy Systems Ordinance**

Rob Houseman reviewed the proposed Small Wind Energy Systems Ordinance, see attached presentation.

Chairman Kathy Barnard opened the public hearing.

Suzanne Ryan questioned how the ordinance interfaces with the Historic District and whether the Board discussed such.

Rob Houseman stated as the ordinance is currently written, small wind energy systems would be allowed however, the Historic District overlay would take precedence; noting an application would need to be submitted and compliance with the standards be demonstrated.

There being no questions or comments, Chairman Barnard closed the public hearing.

Richard O'Donnell questioned regional impact and notification; questioning whether such are federal guidelines.

Rob Houseman replied no, in the State of NH statutes have been amended to require certain activities to be evaluated to determine whether or not it triggers a regional impact.

Referencing the Historic District, Richard O'Donnell stated he does not believe any district should be excluded from the process (for allowing small wind energy systems) except for the Village Residential District.

It was moved by Chris Franson and seconded by Kristi Ginter to move Small Wind Energy Systems Ordinance to the 2010 Town Warrant. All members voted in favor. The motion passed.

➤ **Aircraft Take Offs & Landings on Private Land Overlay District**

Rob Houseman stated in fall 2008 the Board received a request to consider regulating the take offs and landings of aircraft on private lands (as a result of a heliport located at the former Balboni property on Route 28. He stated he received a call from Walter Fawcett who is unable to attend the meeting and who stated objection to the use of the phrase "nuisance" as noted in the statement of purpose.

Chairman Kathy Barnard opened the public hearing.

Robert Viscio, resident & pilot (owner of the former Balboni property), stated the concerns are valid; noting the noise abatement for helicopters is a big issue and one of federal oversight. He stated he has made all the appropriate applications to NH DOT State Aeronautics and has full approvals to operate his heliport. He stated there are 130 privately owned heliports and the majority of the operators are concerned with the safety of everyone and concerned for noise issues. He stated his helicopter is available to the Wolfeboro Police and Fire Departments for emergency services. He recommended the Board contact State Aeronautics for further information.

Suzanne Ryan stated she is unsure if the ordinance is needed. She stated the setbacks of the Historic District are 250' on each side of the road and the proposed ordinance requires the activity to occur 500' from an abutting property. She questioned whether the Board has mathematically or scientifically explored the land areas available for such type of activity; noting the ordinance becomes ineffective and unusable within the Historic District due to setback requirements. She recommended striking "within the Historic District" because it is counterproductive to what the Planning Board is trying to achieve.

Rob Houseman verified Ms. Ryan is not opposed to the activity in the Historic District.

Stacie Jo Pope asked Ms. Ryan if she is speaking on behalf of the Historic District Commission or herself.

Suzanne Ryan replied herself.

Mike Hodder questioned whether the Board talked to members of the Agricultural Commission about how the Commission felt about having heliports as a permitted use in the Agricultural Districts within 100' of a property line where cows or sheep could be running. He questioned whether such should be allowed by Special Exception in order to receive input from abutters.

John Zanke, resident & pilot, stated he is against the ordinance as he believes the ordinance is a solution looking for a problem; noting there is no issue that currently exists relating to aviation in Wolfeboro. He stated there are four different categories of aircraft with different regulations for each; noting such is regulated by the FAA. He stated that by starting to regulate the concept of an aircraft without defining the different types of aircraft that exist, including their operation, is an incorrect action by the Board. He stated the proposed ordinance refers to excessive noise, nuisance and hazards; noting that noise is a function of volume and duration and reviewed examples of such. He stated hazard, in terms of people, are well regulated by the operating rules that every pilot has to comply with; noting FAA rules are focused on safety, primarily the safety for those not involved in the aircraft operation (what to do to protect the general population and ensure their safety). He stated that by trying to regulate such, the Board is projecting into areas the Board has little knowledge or experience; noting such is fraught with risk. In regard to nuisance, he stated the Board should review the number of operations / private airfields that exist; noting such provides for transportation and recreation. He stated typically the primary purpose of private airfields provide for recreation which means extremely few operations. In relation to noise, nuisance and hazard, he questioned the problem the Board is trying to solve; noting that he is unsure as to whether a problem exists. In regard to the exclusion of aviation from the Historic District, he questioned why the concept of a Historic District is mutually exclusive with aviation; noting there is a number of airports that have been designated a national historic landmark. He stated the concept of aviation particularly where it invokes being in a large open grassed space is not by itself contradictory to a historic district. He stated the proposed ordinance raises a question of trying to maintain distances from other abutting residences however, noted that a person creating a private airfield would want to have an aviation friendly neighbor nearby; noting the neighbor may not see it as a nuisance or hazard. He stated the ordinance speaks to permitting the owner of a residence or property to use the airfield however, did not agree with not allowing use of the airfield by friends or associates. He stated the ordinance does not make sense.

Gail Antonucci stated she is building a 3-lot subdivision next to the Viscio property and has no issues with the heliport.

Bruce Terkelsen, resident & pilot, stated the overlay district is not necessary and questioned whether the Board inquired of the Historic District residents as to whether the ordinance is wanted or whether the ordinance is a result of an inquiry from a single person. He stated all aspects of aviation are controlled by the FAA and the State and to impose more than what is currently in place is walking a slippery slope. He requested the Board reconsider the proposal.

There being no questions or comments, Chairman Barnard closed the public hearing.

Jennifer Haskell recommended the Board table the proposal until such time it may become necessary.

Stacie Jo Pope stated the Board's intent focused on trying to protect abutters however, the proposal came across as restrictive.

Kristi Ginter stated there have not been any issues and the Board does not have the knowledge or expertise regarding the issue.

Chris Franson questioned whether the Board should forward the proposal to the voters for them to decide.

Jennifer Haskell stated the Board heard profound testimony this evening in terms of the level of responsibility that pilots take that the voters would not be privy to.

Kathy Barnard stated many of the issues are addressed by other agencies.

Richard O'Donnell questioned whether the categories of aircraft should be defined.

Jennifer Haskell replied no, the minutes would reflect the testimony.

Chris Franson expressed concern for the person that is affected by the aircraft flying above their residence.

Jennifer Haskell stated there is no existing complaint.

It was moved by Kristi Ginter and seconded by Fae Moore to withdraw Section 175.XX Aircraft Take Offs and Landings on Private Land Overlay District for consideration on the 2010 Town Warrant. Richard O'Donnell, Jennifer Haskell, Kathy Barnard, Fae Moore, Stacie Jo Pope, Kristi Ginter voted in favor. Chris Franson abstained. The motion passed.

➤ **Driveway Permit Regulations**

Rob Houseman reviewed the proposed changes to Driveway Permit Regulations, see attached presentation.

Chairman Kathy Barnard opened the public hearing.

There being no questions or comments, Chairman Barnard closed the public hearing.

It was moved by Chris Franson and seconded by Kristi Ginter to adopt the Driveway Permit Regulations, as proposed, specifically to include the addition of an appeals process. All members voted in favor. The motion passed.

Other Business

➤ **Agricultural Commission input regarding zoning district changes**

Rob Houseman reviewed the residential district changes based on the input from the Agricultural Commission.

Chris Franson questioned why horticulture is not part of agriculture.

Rob Houseman stated the Agricultural Commission chose to have a tiered system; with a preference to have a singular definition.

Following review, the Board made the following changes;

- Section 175:71; leave in subparagraph F
- Section 175:72; leave in subparagraph I
- Section 175:82; leave in subparagraph B
- Section 175:87; leave in subparagraph B
- Section 175:XX, Special Exception Uses; add "Veterinarians and animal hospitals"
- Section 175:125; leave in subparagraph H & strike "animals" & replace with "livestock"

It was moved by Chris Franson and seconded by Kristi Ginter to adjourn the November 17, 2009 Wolfeboro Planning Board meeting. All members voted in favor.

There being no further business, the meeting adjourned at 9:25 PM.

Respectfully Submitted,

Lee Ann Keathley

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