

**WOLFEBORO PLANNING BOARD**

**November 19, 2013**

**MINUTES**

**Members Present:** Kathy Barnard, Chairman, Stacie Jo Pope, Vice-Chairman, Brad Harriman, Selectmen's Representative, Vaune Dugan, Chris Franson, Paul O'Brien, Member, John Thurston, Members.

**Members Absent:** Dave Alessandrone, Chuck Storm, Alternates.

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

*Chairman Barnard opened the meeting at 7:01 PM at the Wolfeboro Public Library.*

**Public Hearing**

➤ **Center Street Mixed Use Business District**

Kathy Barnard stated the Planning Board stated the Board has taken into account letters received from the public and input from two public forums that were held in June 2011 and July 2013. She stated the Board received a letter from Barbara Gibbs, The Art Place, dated 11/18/13, see attached.

Rob Houseman reviewed the Center Street Mixed Use Business District zoning changes, see attached.

*Chairman Barnard opened the public hearing.*

Kirk Titus, Furber Lane, Licensed Certified Arborist, stated Bartlett Tree Expert Company employs 9 full time staff and all services are provided off site and horticulturist by nature. He stated Bartlett Tree Service is currently located at the corner of Route 28 and North Line Road however; due to the need for a larger space, relocation is desired. He stated the relocation site is the property currently owned by Trites Automotive however; the use is not a permitted use or a use permitted by Special Exception under the proposed zoning changes. He stated the business does not meet the definition of horticultural establishment and therefore, proposes the following amendment to the zoning changes in order to allow such; include Arboricultural Services as a use permitted by Special Exception; defined as "Establishments primarily engaged in the business of rendering off-site professional arboricultural services relating to the care and preservation of trees and shrubs. The establishment may include land and buildings for office use and the storage of vehicles, equipment and supplies. On-site retail sales or the on-site manufacturing or fabrication of any products is not permitted." He referenced an email from Bartlett Tree Expert Company's attorney, Paul Pudloski dated 11/13/13, stating the use would be a less intense use because there are not a lot of customers at the site (professional services rendered off site) and there are no products for sale on site.

Chris Franson asked what materials would be stored on site.

Kirk Titus replied fertilizers and chemicals; noting the business currently has a small federally approved storage unit for such on site that is inspected annually by the State.

Paul O'Brien asked whether vehicle or equipment service would take place on the property.

Kirk Titus replied no, the vehicles and equipment are taken off site to a for service. He stated the new facility would allow storage of the company trucks inside a building.

Chris Franson asked if the business would fall under any current definition or business services.

Rob Houseman replied no. He stated the proposal was reviewed by the TRC and the proposed zoning changes do not include that type of business in the district.

Roger Murray, representing Lake Wentworth Foundation and Lake Wentworth Association, stated he supports Mr. Titus' proposed definition and amendment to the zoning changes; noting such would be a good reuse of the property. He stated the Trites property was noted as an area of concern in the Lake Wentworth Crescent Lake Watershed Management Plan. He stated the Lake Wentworth Foundation has an agreement with Tom Trites to obtain easements to allow for stormwater improvements. He submitted a list of proposed permitted and Special Exception uses, see attached. He recommended the following revisions to the proposed zoning changes; Permitted Uses, Personal Services: add "except for laundromats and dry cleaning establishments," Special Exception uses: strike inns. He stated inns should not be permitted due to issues related to lights, traffic, noise, large septic systems, large parking lots; noting such has a significant negative impact. He stated there have been problems with noise from The Wolfeboro Inn and the Inn on North Main and placing an inn in the proposed district would cause problems with the residents in the district and residents of Lake Wentworth. He reviewed the Master Plan, specifically LU3, FLD3 and Greater Downtown goals, and stated inns need to be located in the downtown area. He stated there needs to be a strong vital Downtown area.

Paul O'Brien verified that Mr. Murray is stating that inns belong closer to or in the Downtown. He asked how to ensure that such occurs.

Roger Murray stated support needs to be provided to the existing inns, pedestrian and bicycle access needs to be improved, access to municipal water and sewer, access to a water body and proximity to Downtown.

Paul O'Brien verified, according to Mr. Murray's statements, the noise issues would not be egregious to Downtown area and residents.

Roger Murray stated presumably the inn would be facing the water and noted Downtown has more traffic and commercial uses.

Richard Maase stated he endorses Mr. Titus' recommended amendment to the zoning changes and endorses Mr. Murray's comments regarding inns. Referencing the definition of lot coverage and impervious surface, he stated there is a loophole in the way the definition is written and recommends adopting the definitions used in the Stormwater Management Regulations for disconnected impervious surface and effective impervious area, impervious surface. He stated 40% lot coverage could easily be exceeded by the loophole in the definition; noting the original purpose of the proposal was to improve the aesthetics of the area. He stated the definitions noted in the proposed zoning change is not adequate and recommended making lot coverage associated with impervious surfaces. He recommended carrying over the definitions into the zoning code as well. He stated the current proposal applies to limited properties where many of those properties are developed. He noted the Stormwater Management Regulations would control the redevelopment of properties and the work the Board does this evening sets the stage for discussion of the overlay district.

Linda Murray stated she supports the new definition of horticultural uses and is opposed to permitting inns in the district. She stated business should be centered in the Downtown area and noted the Economic Development Committee established two Economic Revitalization Zones. She stated Bay Street would be a wonderful place for an inn and noted the improvements to Foss Field and the Glendon Street parking lot has established a beautiful view for an inn on Bay Street.

Paul O'Brien questioned how the Board should support placing an inn on Bay Street considering the sloping hill and potential runoff into Back Bay.

Carl Crosley, 5 North Kenney Shore, stated he is in favor of Mr. Titus' amendment and expressed concern regarding restaurants carryout as a use permitted by Special Exception, specifically franchise establishments.

Rob Houseman asked Mr. Maase if he is recommending the regulation of effective impervious area.

Richard Maase stated he doesn't believe the current definition uses the term total sum of disconnected impervious surface and effective impervious surface. He stated he thinks the Board would want a limit on effective impervious surface.

Rob Houseman stated he believes Mr. Maase's recommendation would weaken the lot coverage standard and recommended the Board address the total sum.

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

Referencing Mr. Titus' proposed amendment, Rob Houseman stated the Trite's property is under a time constraint due to a purchase and sales agreement. He stated if the Board approves the amendment this evening, the applicant could proceed to the ZBA for a Special Exception.

Vaune Dugan stated the amendment is very specific to one type of operation and notes the facility includes the storage of chemicals and fertilizers.

Stacie Jo Pope stated the use is not permitted in the proposed zoning district changes.

Vaune Dugan stated the Board should review what triggered the fact that the business did not qualify under the permitted uses and address such.

Rob Houseman stated the issue is related to the question of what is the principle business and noted the closest definition in the zoning related to such is a contractor's yard.

Stacie Jo Pope stated she feels the amendment is a less intensive use than a contractor's yard.

**It was moved by Chris Franson and seconded by Stacie Jo Pope to include Arboricultural Services as a permitted use by Special Exception.**

*Discussion of the motion:*

Vaune Dugan expressed concern regarding the storage of chemicals and fertilizers and asked how such would be contained.

Paul O'Brien stated the material is stored in a storage unit and the unit is inspected by the State.

Kathy Barnard stated the use will need to meet the ZBA's criteria for a Special Exception and go through Planning Board Site Plan Review.

John Thurston asked the difference between contractor's yard and contractor's yard light.

Rob Houseman stated the threshold is 33,000 gross vehicle weight.

John Thurston asked if the vehicles fall under such.

Kirk Titus replied not necessarily.

**It was moved by Chris Franson and seconded by Stacie Jo Pope to include Arboricultural Services as a permitted use by Special Exception. Kathy Barnard, Chris Franson, Stacie Jo Pope, Paul O'Brien, Brad Harriman voted in favor. Vaune Dugan abstained. John Thurston opposed. The motion passes.**

**It was moved by Chris Franson and seconded by Stacie Jo Pope to delete Inns from Special Exception Uses.**

*Discussion of the motion:*

Vaune Dugan stated there are ways to contain stormwater and disagrees with precluding Inns on Bay Street.

Kathy Barnard stated her issue is regarding the construction of large septic systems for inns.

Stacie Jo Pope stated inns are a high intensity use and inns in the district would affect the residences in the area and the watershed.

Rob Houseman stated the original proposed changes included a change in the district boundary that included the Allen A property and the Board's intent focused on the adaptive reuse of that property. He stated the Board later revised the district boundaries which excluded the Allen A property however; did not revise the permitted uses. Referencing restaurants, carryout and franchise establishments, he stated the Town does not regulate ownership however, does regulate architectural style. He stated the Town's zoning precludes drive thru restaurants however; does not prohibit franchises.

It was moved by Chris Franson and seconded by Stacie Jo Pope to delete Inns from Special Exception Uses. Kathy Barnard, Stacie Jo Pope, Chris Franson, Vaune Dugan voted in favor. John Thurston, Brad Harriman and Paul O'Brien opposed. The motion passes.

Referencing restaurants, carryout, Stacie Jo Pope stated she thinks of establishments such as Huck's Hoagies and Full Belli Deli. She stated she feels the concern has been addressed.

Chris Franson stated the intent was to attract tourists (snowmobilers) to the area. She stated she believes there is a place for carryout establishments in the district.

*Board consensus to keep restaurants, carryout as a Special Exception use.*

Rob Houseman read the definition of personal services.

Chris Franson stated the Board prohibited photofinishing from the business services definition and recommended amending the definition of personal services to exclude laundromats and dry cleaning establishments.

It was moved by Chris Franson and seconded by Stacie Jo Pope to amend the definition of Personal Services to exclude laundromats and dry cleaning establishments,

*Discussion of the motion:*

Paul O'Brien questioned the concern for such.

Stacie Jo Pope replied the use of chemicals.

Chris Franson expressed concern for phosphorous.

Paul O'Brien asked if a laundry service that ships the apparel off site for cleaning would be appropriate.

Rob Houseman recommended amending the motion as follows "exclude laundromats and/or onsite laundry services" to address such and allow for offsite laundry services.

It was moved by Chris Franson and seconded by Stacie Jo Pope to amend the motion and definition of Personal Services to exclude laundromats and/or onsite laundry services. Kathy Barnard, Chris Franson, Stacie Jo Pope, Vaune Dugan, Paul O'Brien, Brad Harriman voted in favor. John Thurston abstained. The motion passes.

Following review and discussion of the Center Street Mixed Use Business District, the Board recommended the following;

- Include Arboricultural Services as a use permitted by Special Exception; defined as "Establishments primarily engaged in the business of rendering off-site professional arboricultural services relating to the care and preservation of trees and shrubs. The establishment may include land and buildings for office

use and the storage of vehicles, equipment and supplies. On-site retail sales or the on-site manufacturing or fabrication of any products is not permitted."

- Delete Inns as a use by Special Exception
- Permitted Uses, Personal Services; amend definition to exclude Laundromats, dry cleaning establishments and/or onsite laundry services
- Review definitions (noted in Richard Maase's testimony)
- Continue public hearing to 12/17/13

It was moved by Stacie Jo Pope and seconded by Chris Franson to continue the Center Street Mixed Use Business District public hearing to December 17, 2013. All members voted in favor. The motion passed.

#### Work Session

- **Stormwater Management Regulations**

Kathy Barnard stated Dave Ford is reviewing the regulations and will be providing input and Mr. Houseman requested review of the regulations by another engineer in an attempt to resolve the outstanding issues. She stated she requested Chris Franson clarify the purpose statement and proposed the following:

Version #1:

To protect, maintain and enhance the public health, safety, prosperity, environment and general welfare by establishing minimum requirements and procedures to control the adverse affects of increased post-development stormwater runoff, decreased groundwater recharge, and nonpoint source pollution associated with new development and redevelopment.

As authorized by RSA 674:44 II this includes:

1. Protection from inadequate drainage or conditions conducive to flooding
2. Protection of the quality of surface and groundwater
3. Provide for attractive development or redevelopment

Version #2:

As authorized by RSA 674:44 II, among the purposes of these site plan and storm water management regulations are:

1. Provide for the safe and attractive development of the site
2. Guard against such conditions as would involve danger or injury to health, safety or prosperity
3. Protection from inadequate drainage or conditions conducive to flooding of the property or that of another
4. Protection of the quality of surface and groundwater

Rob Houseman stated he presented Richard Maase and Roger Murray's comments to Dave Ford and Jim Rines, White Mountain Survey Co., for review and comment. He stated he continues to have concerns regarding changes to the regulations that increase design requirements such as does the cost of the design and construction impose such strict standards that will prevent development and redevelopment and that there is no clear way to measure compliance post construction.

Paul O'Brien asked if Staff believes the comments by Mr. Ford or Mr. Rines will substantially moderate the discussion and/or the regulations.

Rob Houseman stated Dave Ford is concerned for potential negative impact and Mr. Rines' comments speak to the technical issues. He reviewed the regulations, see attached.

Paul O'Brien asked how to ensure maintenance.

Rob Houseman replied through an enforcement program.

Paul O'Brien asked who would manage the reporting.

Rob Houseman replied his office (Planning and Development Office) and reviewed the process regarding such.

Paul O'Brien asked if ongoing assessment would add additional cost to the operation.

Rob Houseman replied no. He recommended cancelling the public hearing scheduled for 12/3/13, review further at a work session and then reschedule the public hearing. He recommended adoption of the regulations be in place prior to the Center Street rezoning at Town Warrant.

Vaune Dugan stated she feels Mr. Ford and Mr. Rines' review is critical.

The Board agreed to cancel the public hearing scheduled for 12/3/13.

- **Shorefront Residential District**

Kathy Barnard stated the subcommittee has been meeting since May 2012 and consists of Vaune Dugan, John Thurston, Art Slocum (Conservation Commission member), Dan Coons (Conservation Commission Chairman), Roger Murray, Paul Montrone and her.

Rob Houseman noted four of the six members are waterfront property owners.

Paul O'Brien noted two lakes were represented; Lake Wentworth and Lake Winnepesaukee.

Rob Houseman reviewed the proposed changes to the Shorefront Residential District, see attached.

Chris Franson asked if a lawn is considered ground cover.

Rob Houseman replied no.

Paul O'Brien asked what the Town's standards were three years ago.

Rob Houseman stated there were no standards.

Chris Franson asked the definition of "imported organic".

Brad Harriman asked if the committee reviewed other communities.

Rob Houseman stated other communities that are more restrictive or different from the State's regulations are Moultonborough and Gilford. He stated Holderness and Meredith are currently reviewing the issue.

John Thurston noted a the State's Shorefront Advisory Committee held a forum in Wolfeboro and the Town's committee presented the proposed changes to them.

**It was moved by Chris Franson and seconded by John Thurston to move Shorefront Residential District to public hearing on December 17, 2013. All members voted in favor. The motion passed.**

**It was moved by Chris Franson and seconded by Stacie Jo Pope to adjourn the November 19, 2013 Wolfeboro Planning Board meeting. All members voted in favor.**

There being no further business, the meeting adjourned at 9:34 PM.

Respectfully Submitted,

Lee Ann Keathley

Lee Ann Keathley

### **§ 175-XXX. Permitted Uses.**

Permitted uses shall be as follows:

- A. Single detached dwelling.
- B. Duplex dwelling.
- C. Accessory home occupations.
- D. Accessory structures.
- E. Conversion of a permitted use to another permitted use and no changes to the exterior of the building or parking is required.
- F. Accessory uses.
- G. Banks.<sup>1,2</sup>
- H. Business services.<sup>1,2</sup>
- I. Professional offices.<sup>1,2</sup>
- J. Personal services.<sup>1,2</sup>
- K. ~~Inns.~~<sup>1,2</sup>
- L. Bed and Breakfast.<sup>1,2</sup>
- M. Museum.<sup>1,2</sup>
- N. Library.<sup>1,2</sup>
- O. Cultural arts facility.<sup>1,2</sup>
- P. Educational institutions.<sup>1,2</sup>
- Q. Day care, any number of people.<sup>1,2</sup>

#### **NOTES:**

<sup>1</sup>Requires Planning board approval under the provisions of RSA 676:4.

<sup>2</sup>All parking areas shall be located at the rear of buildings. Where the Planning Board determines that such placement is not practicable, parking may be located at the side of buildings, provided that no part of the parking area is located forward of the front elevation of the building. Any parking area located on the side of a building shall be screened from the road.

### **§ 175-XXX. Special Exception uses.**

Uses which may be permitted by special exception shall be as follows:

- A. Elderly housing.<sup>1,2</sup>
- B. Recreational Use.
- C. Horticultural Establishments
- D. Inns.<sup>1,2</sup>
- E. Movie Theatres<sup>1,2</sup>
- F. Restaurants.<sup>1,2</sup>
- G. Restaurants, carryout.<sup>1,2</sup>

#### **NOTES:**

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**175-XXX STORM WATER MANAGEMENT:** The Storm Water Management Regulations (Site Plan Review and Subdivision Regulations) are adopted by reference as part of this ordinance and no waivers shall be permitted from said regulation(s).

**§ 175-XXX BUFFER REQUIREMENTS:** A one hundred foot (100') wide buffer strip shall be maintained along the edge of all perennial streams within the district discharging into the Lake Wentworth Watershed. The required buffer distance shall be measured from the centerline of such tributary stream. The buffer strip shall be maintained in its natural state to the maximum extent possible, and shall be planted with an erosion resistant vegetative cover in those areas that have been disturbed.

A reduction in the required buffer width down to an absolute minimum of seventy-five feet (75') may be granted by the Planning Board upon presentation of an impact study that provides sufficient documentation and justification that even with the reduction, the same or a greater degree of water quality protection would be afforded as would be with the full-width buffer. In granting such a reduction, the Planning Board may require additional erosion control or runoff control measures as deemed necessary to protect water quality.

All development shall be located outside of the required buffer strip, except for the following:

- A. Encroachment into or through the required buffer by roads, utilities, or stormwater management structures may be permitted provided the following performance standards are met:
  - (1) Road and utility crossings will be limited to the shortest path possible and that which causes the least amount of land disturbance and alteration to the hydrology of the watershed.
  - (2) Any stormwater management facilities located within the buffer should be sited within the context of a larger watershed stormwater management program.
  - (3) No more land shall be disturbed than is necessary.
  - (4) Indigenous vegetation shall be preserved to the maximum extent possible.
  - (5) Wherever possible, disturbed areas shall be planted with trees and shrubs.



## **§ 175-XXX DEVELOPMENT STANDARDS**

- A. Pedestrian Area – the area directly in front of the front wall of the building and extending to the front property line shall be maintained as a pedestrian area and shall be improved with appropriate amenities to link the building with the sidewalk and to encourage pedestrian and/or customer use of the space.
- B. Front Entrance – the front wall of the principal building shall contain a "front" door providing access to the building for tenants, customers, or users of the building.
- C. Treatment of the front façade – The front wall of the principal building shall be designed to include windows appropriate to the proposed use. On the first floor, not less than twenty percent of the surface area of the front wall shall be windows. On upper floors, not less than ten (10) percent of the surface area shall be windows.
- D. Storage and Service Areas – all storage and service areas and facilities including dumpsters shall be located to the side or rear of the principal building and shall not be visible from a public street.
- E. Reuse of Residential Structures – The conversion or reuse of residential structures for non-residential use shall not alter the essential character of the building. Alterations or additions to the structure shall maintain the existing character of the structure.
- F. Architectural treatment of Buildings- The principal building shall have a pitched roof with a minimum pitch of 4/12 and shall be compatible in design and materials with traditional New England architecture (see the Voluntary Design Guidelines for additional clarification). "Franchise" architecture, where the design of the building serves as an advertising feature, shall not be permitted within the district.

## **§ 175-XXX. OTHER REQUIREMENTS:**

For additional requirements, see:

- A. Article XXII, Off-Street Parking and Loading Requirements.
- B. Landscaping – In addition to compliance with Article XXV, Streetscape, Buffering and Screening, the setback from the rail corridor shall be treated as a buffer yard and shall comply with the following standards:
  - 1. The setback shall contain vegetative plantings and/or architectural screening that achieves the purpose of the buffer yard, and which meets the requirements for buffering below. Trees used for buffering purposes shall be suitable as defined below in § 175-158D entitled "Screening, general standards."
  - 2. One (1) streetscape tree planting shall be required for every 30ft of frontage and spaced every 30 ft.

3. The setback shall be maintained in a natural condition free of structures, loading or storage areas, parking, roads, or driveways.
4. The Setback shall be applied equally to all similarly situated properties. Modifications to these standards may be granted in writing by the Planning Board if the Planning Board, after consultation with a certified landscape professional or landscape architect, finds any of the following circumstances exist on the proposed building site, or surrounding properties:
  - (a) Natural land characteristics such as topography or existing vegetation would achieve the same intent of this section.
  - (b) Innovative landscaping or architectural design is employed on the site to achieve an equivalent screening or buffering effect.
  - (c) The required buffering would be ineffective at maturity due to the proposed topography of the site and/or the location of the improvements on the site.

#### Proposed Definition

##### **BUSINESS SERVICES**

Establishments primarily engaged in rendering services to business establishments on a fee or contract basis, such as advertising and mailing, building maintenance, employment service, management and consulting services, protective services, office equipment rental and leasing, commercial research, development and testing, photofinishing and personal supply services.

#### Current Definition

##### **Lot Coverage**

The percent of the total lot area which may be covered by all impervious surfaces, including but not limited to structures, sidewalks, parking areas, roads and driveways, excluding travel ways/right-of-ways for access to other lots.

Impervious surface means any modified surface that cannot effectively absorb or infiltrate water. Examples of impervious surfaces include, but are not limited to, roofs, decks, patios, and paved, gravel, or crushed stone driveways, parking areas, and walkways unless designed to effectively absorb or infiltrate water. (RSA 483-B:4, VII-b.)

**Lee Ann**

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**Subject:** FW: Route 28 Rezoning

**From:** The Art Place [<mailto:artplace@metrocast.net>]  
**Sent:** Monday, November 18, 2013 12:09 PM  
**To:** [wolftwnplnr@metrocast.net](mailto:wolftwnplnr@metrocast.net)  
**Cc:** [kathybarnard@metrocast.net](mailto:kathybarnard@metrocast.net)  
**Subject:** Route 28 Rezoning

To the Planning Board,

I own The Art Place on Main Street in Wolfeboro and have had my business in town since 1987. I attended the Rezoning meeting last July and was glad that people were given the opportunity to speak. I wish there had been more downtown business owners there, but glad that at least Cindy from Black's spoke up. My concerns are, of course, keeping the downtown business core as viable. It is difficult, to say the least, to keep the doors open year round. The winters, like this past winter, do not help. With the kind of businesses that could come in and "snuff out" the Mom and Pop operations, a lot of downtown businesses may not be able to hold on. My other concern is for what brings people to this area. It is our lakes and surrounding landscape that make it one's destination. Many people state they want to live here. They see Wolfeboro for its beautiful lakes and quiet life style. My heart also goes out to all home owners living so close to these proposed changes. Their entire reason for being here is at risk. I imagine that a strip mall in one's backyard or front yard is not what people had in mind when they purchased property here.

As I take my bike ride on a routine basis, I'm watching for the many wildlife that make my ride such a pleasure. I have seen rabbit, deer, fox, turkeys, grouse, bald eagles, a family of owls, Great Blue heron, as well as all types of other birds. Their homes would also be disturbed and their environment challenged.

Thank you for allowing me the opportunity to express my concerns.

Barbara Gibbs  
The Art Place  
9 North Main Street  
PO Box 1884  
Wolfeboro NH 03894  
603-569-6159

**KIRK H. TITUS**  
**54 Furber Lane**  
**P.O. Box 723**  
**Wolfeboro, NH 03894-0723**

**November 12, 2013**

Proposed amendment to proposed zoning ordinance to create the "Center Street/Rte 28 Mixed Use Business District":

**Sec. 175-XXX. Special Exception uses.**

Uses which may be permitted by special exception shall be as follows:

(add): **H. Arboricultural services**

Proposed Definition:

**ARBORICULTURAL SERVICES:**

**Establishments primarily engaged in the business of rendering off-site professional arboricultural services relating to the care and preservation of trees and shrubs. The establishment may include land and buildings for office use and the storage of vehicles, equipment and supplies. On-site retail sales or the on-site manufacturing or fabrication of any products is not permitted.**

## Robert Houseman

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**From:** Paul Pudloski <Pudloski@portcitylaw.com>  
**Sent:** Wednesday, November 13, 2013 11:11 AM  
**To:** Robert Houseman (wolftwnplnr@metrocast.net)  
**Cc:** Kirk Titus  
**Subject:** Proposed Amendment to Rte 28 zoning ordinance  
**Attachments:** Proposed amendment to zoning ordin.—11.7.13.doc

Dear Mr. Houseman,

I am NH counsel for the F.A. Bartlett Tree Expert Company. As you know, Bartlett Tree is planning to relocate from its current location at North Line Road and Rte 28 to a portion of the Trites Automotive property at 635 Center Street in Wolfeboro. Both of these locations are within the proposed new zone known as the "Center Street/Rte 28 Mixed Use Business District".

Bartlett Tree is "grandfathered" as to its current location on North Line Road, but Bartlett Tree desires to acquire a 3.1 ac. lot and existing building on a portion of the Trites property to meet its current needs.

The proposed zoning ordinance, as currently drafted, allows certain uses by special exception, including "horticultural establishments". However, Bartlett Tree's operation does not meet the definition of a "horticultural establishment".

In that light, Kirk Titus, a lifetime Wolfeboro resident and the manager of the Bartlett Tree facility in Wolfeboro, intends to offer the attached amendment to the proposed zoning ordinance at the Planning Board meeting on Nov. 19.

Please circulate this proposed amendment among the members of the Planning Board prior to the Nov. 19 meeting. Thank you.

Very truly yours,

Paul R. Pudloski, Esq.  
AHLGREN, PERRAULT & PUDLOSKI, PA  
101 Market Street, PO Box 1211  
Portsmouth, NH 03802  
603/431-4522  
Fax 603/427-0005

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## Center Street/Rte 28 Mixed Use Business District

submitted by Attorney  
murray  
11/19/13

### § 175-XXX. Permitted uses.

Permitted uses shall be as follows:

- A. Single detached dwelling.
- B. Duplex dwelling.
- C. Accessory home occupation.
- D. Accessory structure.
- E. Conversion of a permitted use to another permitted use and no changes to the exterior of the building or parking is required.
- F. Accessory use.
- G. Bed and Breakfast.
- H. Artisan's studio.
- I. Antique shop.
- J. Museum.
- K. Professional office.
- L. Library.

### § 175-XXX. Special Exception uses.

Uses which may be permitted by special exception shall be as follows:

- A. Cultural arts facility.
- B. Educational institution.
- C. Recreational use.

**Permitted Uses from Public Forum:** office space, museums, professional buildings (limited), uses that require smaller parking lots, home occupations, cemetery.

## Article IX. SHORE FRONT RESIDENTIAL DISTRICT

### § 175-62. Purpose.

The purpose of this district is to maintain the integrity of existing shorefront residential developments and protect the shorefront from over-development. Further, the Town recognizes the importance of implementing water quality protection standards in order to protect the shorelands within the Town of Wolfeboro since they are among its most valuable and fragile natural resources, and that the protection of these shorelands is essential to maintain the integrity and exceptional quality of the waters.

### § 175-63. Dimensional controls.

Dimensional controls shall be as follows:

- A. Minimum lot area: 43,560 square feet.
- B. Minimum lot frontage: 150 feet.
- C. Minimum shore frontage 150 feet (shore frontage shall be measured in fifty-foot straight line increments.)

### § 175-64. Setback requirements; building height; coverage.

#### A. Setback requirements.

- (1) Front yard (street): 30 feet.
  - (2) Side yard. Straight line shore frontage:
    - (a) Less than 75 feet: 10 feet.
    - (b) Seventy-five to 99 feet: 15 feet.
    - (c) One hundred to 149 feet: 20 feet.
    - (d) One hundred fifty feet: 25 feet.
  - (3) Rear yard: 25 feet.
  - (4) Shoreline: 50 feet.
- B. Maximum height permitted: 30 feet, for structures with roofs with a pitch of less than 10/12, and 35 feet if 10/12 or greater. However, the height restrictions shall not apply to appurtenant structures, such as church spires, belfries, cupolas, domes, chimneys, flagpoles, antennas or similar structures; provided,

however, that no such structure shall exceed a maximum footprint of 144 square feet.

C. No building shall be closer than 20 feet to any other building on the same lot, except for private garages.

D. Percent coverage: 30%.

§ 175-65. Permitted uses.

Permitted uses shall be as follows:

A. One single detached dwelling.

B. Accessory structures.

C. One boathouse, as an accessory structure, in compliance with the following standards:

- (1) Purpose and intent. The purpose is to preserve the integrity of the surface waters of the Town, especially the more sensitive smaller lakes and ponds. All shoreline structures shall be constructed so as to insure safe navigation, to minimize reduction of water availability for public use, to promote higher water quality and safety conditions, to avoid changes in surface and subsurface conditions that would be deleterious to fish and wildlife habitat, and to avoid changes in water movements that might cause erosion or siltation.
- (2) Definition. For the purposes of this subsection, "boathouse" means a docking facility which has a permanent roof with or without sides covering the boat slip or slips. A boathouse must be an accessory structure to the principal permitted structure.
- (3) An existing boathouse may be repaired, replaced or reconstructed so long as its external dimensions do not exceed those of the facility that is being repaired, replaced or reconstructed, and the project otherwise complies with applicable state and municipal regulations.
- (4) A new boathouse may be constructed, provided that it will not be constructed in or over wetlands or public waters, and provided further that each of the following criteria is met:
  - (a) The lot on which it is to be constructed has shore frontage on Lake Winnepesaukee.



- (b) The lot on which it is to be constructed meets the minimum shore frontage requirement of § 175-63 of this Zoning Ordinance;
- (c) There is no other boathouse on the lot;
- (d) The footprint of the boathouse will not exceed 900 square feet;
- (e) The height of the boathouse will not exceed 20 feet;
- (f) The applicant has received a permit from the New Hampshire Department of Environmental Services;
- (g) The applicant has received a special use permit from the Planning Board or designee, which shall consider the recommendation of the Conservation Commission prior to rendering a decision; and
- (h) The project must otherwise comply with all applicable state and municipal regulations.

§ 175-66. Special exception uses.

Uses which may be permitted by special exception shall be as follows:

- A. One home occupation, 500 square feet or less.

§ 175-67. Shorefront lot improvement standards.

- A. The following standards apply within 250 feet from the reference line, also known as "the protected shoreland":

- (1) Impervious surface area limitation.

- (a) No greater than 30% of the area of a lot within the protected shoreland may be composed of impervious surfaces.

- (b) If a homeowner or developer wishes to exceed 20%, a stormwater management plan, prepared by a professional engineer, must be implemented to infiltrate increased stormwater from development, and if any grid segment within the waterfront buffer does not meet the minimum required fifty (50)-point tree and sapling score, each deficient grid segment must be planted with additional vegetation to at least achieve the minimum required score.

- (2) Other restrictions/notes: no establishment/expansion of salt storage yards, auto junkyards, solid waste and hazardous waste facilities.

- (3) All new lots, including those in excess of five acres, are subject to subdivision approval by New Hampshire Department of Environmental Services.
- (4) Setback requirements for all new septic systems shall comply with NH Department of Environmental Services Subsurface Disposal Requirements.
- (5) In accordance with RSA 485-A: 39, when selling developed waterfront property, a site assessment study is required for all properties with on-site septic that are contiguous to or within 200 feet of water bodies.
- (6) In accordance with RSA 485-A:17, an alteration of terrain permit is required for any project that proposes to disturb more than 50,000 square feet of contiguous terrain if any portion of the project is within the protected shoreland or disturbs an area having a grade of 25% or greater within 50 feet of any surface water.

#### B. Natural Woodlands Buffer Standards:

The following standards apply within 150 feet from the reference line — natural woodland buffer limitations:

- (1) For lots that are 1/2 acre or more in size between the reference line and 150 feet from the reference line, at least 50% of the area between 50 feet and 150 feet from the reference line, exclusive of impervious surfaces, must be maintained in an unaltered state.
- (2) For lots that are less than 1/2 acre between the reference line and 150 feet from the reference line, at least 25% of the area between 50 feet and 150 feet from the reference line must remain in an unaltered state.
- (3) For Lots that do not comply with the area requirements of the Natural Woodlands Buffer unaltered state, the standards noted in Section B(1) and (2) above shall be satisfied using the following renewal standards:
  - a. The Unaltered State square footage requirement shall be established based on the percentages required in Section B (1)-(2) above. Further, the Unaltered State Area(s), shall contain a minimum of fifty (50) points for every 1,250 square feet using the following minimum standards:

Trees: 20 points  
 Shrubs: 15 points  
 Ground Cover: 15 points

- b. The minimum contiguous area of unaltered area shall be 100 square feet. Hardy vegetation shall be planted without the destruction of existing plants. Any damaged vegetation shall be replaced.
- c. Areas satisfying the definition of unaltered state in Section E. below that contain mature trees at a density that prevents the establishment and growth of shrubs and ground cover, as certified by an arborist, shall qualify as unaltered state area, whether or not they contain the minimum number of points required by Section B.(3), a. above
- d. Tree and sapling diameters shall be measured at 4 1/2 feet above the ground for existing trees and saplings, or by caliper at a height consistent with established nursery industry standards when nursery stock is to be used, and are scored as follows:

<u>Diameter or Caliper</u>	<u>Score</u>
• 1 to 3 inches	1
• 3 to 6 inches	5
• 6 to 12 inches	10
• Greater than 12 inches	15

Shrubs and ground cover, shall be scored as follows:

- Four square feet of shrub/groundcover area: 1 point.

Dead, diseased, or unsafe trees, shrubs and groundcover shall not be included in scoring and may be removed.

C. The following standards apply to the fifty-foot setback from the reference line — waterfront buffer and primary building setback:

(1) All primary structures must be set back at least 50 feet from the reference line.

(2) Within 50 feet from the reference line, a waterfront buffer must be maintained. Within the waterfront buffer, tree coverage is

managed with a fifty-foot-by-fifty-foot grid and point system. Trees and saplings may be cut, provided the sum score of the remaining trees and saplings within the grid segment is at least 50 points. Trees and Saplings shall be scored as follows:

Diameter or Caliper	Score
• 1 to 3 inches	1
• 3 to 6 inches	5
• 6 to 12 inches	10
• Greater than 12 inches	15

- (3) Except as otherwise provided in this Section C, no vegetation shall be removed except for a footpath that is providing the access to any docks, beaches and structures, not to exceed six feet in width, and which does not concentrate stormwater or contribute to erosion and does not reduce compliance with the point system requirement.
- (4) Existing ground cover, including the duff layer, must remain intact; no cutting or removal of vegetation below three feet in height (excluding previously existing lawns and landscaped areas). Stumps, roots, and rocks embedded in the ground must remain intact in the ground. Stumps may be ground down below grade, provided new plantings are made to replace the removed tree.
- (5) If the total tree and sapling score in any 50 foot by 50 foot segment exceeds 50 points, then trees, saplings, and shrubs over 3 feet in height may be removed as long as the sum of the scores for the remaining trees and saplings in that segment does not total less than 50 points. If for any reason there is insufficient area for a full segment, or the segment contains areas incapable of supporting trees and saplings, such as areas of rock, ledge, or beaches, the point score requirement for the remaining vegetation in that partial segment shall be reduced proportionally to that required of a full segment. Vegetation shall not be removed from any segment which fails to meet the minimum point score for that segment. Owners are encouraged to take efforts to plan the maintenance of their waterfront buffer areas including the planting of additional non-invasive vegetation to increase point scores within segments, thus providing sufficient points to allow the future removal of vegetation as may become necessary while still meeting the requirements of this section.

- (6) Dead, diseased, or unsafe trees, shrubs and groundcover shall not be included in scoring and may be removed.
- (7) Pesticide and herbicide applications can be applied by a licensed applicator only.
- (8) Only low-phosphorus, slow-release nitrogen fertilizer can be used beyond 25 feet of the reference line. No fertilizer may be used within 25 feet of the reference line.

D. Lot redevelopment - Any property owner who wishes to redevelop a property on which a pre-existing nonconforming primary structure exists shall submit the following:

- (1) The footprint(s), impervious area(s), and location(s) of all existing structure(s) within the protected shoreland;
- (2) The footprint(s), impervious area(s), and location(s) of all proposed structures within the protected shoreland;
- (3) Profiles of all existing and proposed structures within the waterfront buffer, clearly showing the ridgeline heights to scale and or with dimensions given to ensure the proposed conforms with applicable height restrictions of section 175-64, B.; and the
- (4) An explanation of how the project:
  - a. Is more nearly conforming than the existing structure(s), as that phrase is defined below, with reference to the information *provided pursuant to (1) through (3), above.*

For purposes of this section **more nearly conforming** means alteration of the location or size of the existing footprints, or redevelopment of the existing conditions of the property, such that the structures or the property are brought into greater conformity with the standards of this section. Methods for achieving greater conformity include, without limitation, reducing the overall square footage of structural footprints, enhancing stormwater management, adding infiltration areas and landscaping, upgrading wastewater treatment, improving traffic management, or other enhancements that improve wildlife habitat or resource protection.)

E. Definitions. As used in this section, the following terms shall have the meanings indicated:

**DUFF LAYER:** The organic material layer between the A-horizon (or uppermost soil mineral horizon) and the \*litter layer. The duff layer is decomposing organic

material, decomposed to the point at which there is no identifiable organic materials (pine straw, leaves, twigs, etc).

**\*Litter:** Undecomposed or only partially decomposed organic material that can be readily identified (e.g., plant leaves, twigs, etc.)

**GROUND COVER:** any herbaceous plant or any woody seedling or shrub generally less than 3 feet in height. Ground cover shall not include lawns, , annual gardens, invasive species as listed by the department of agriculture, markets, and food in accordance with RSA 430:53, III, exotic species as designated by rule of the department of environmental services in accordance with RSA 487:24, VII, imported organic or stone mulches, or other artificial materials.

**REFERENCE LINE:** The reference line is the point from which setbacks are determined. For rivers it is the ordinary high water mark, and for lakes and ponds it is the full surface elevation.

**RENEWAL:** The establishment of the required vegetation necessary to comply with the "UNALTERED STATE" provision of the ordinance.

**UNALTERED STATE:** Hardy and noninvasive vegetation, including ground cover, but not including lawns and annual gardens, allowed to grow without cutting, limbing, trimming, pruning or mowing or other similar activities except as needed to maintain the health of the vegetation and renewal without damaging existing natural resources. Invasive noxious species can be removed.