

# Town of Newington, NH

## PLANNING BOARD

Meeting Minutes, Monday, September 22, 2014

- Call to Order:** Chair Denis Hebert called the September 22, 2014 meeting at 6:42 PM.
- Present:** Jack Pare; Justin Richardson; Alternate Member, Peggy Lamson; Board of Selectmen Rep, Rick Stern; Jane Kendall, Recorder; and Thomas Morgan, Town Planner
- Absent:** Vice Chair, Mike Marconi, Bernie Christopher and Chris Cross
- Public Guests:** Craig Daigle

Chair Hebert said Town Planner, Tom Morgan, Town counsel, Attorney John Ratigan and he kicked around some ideas for a preliminary list that could be expounded on before the Town vote and wanted additional feedback from the Board.

A) Appropriate sizing requirements for uplands. Confer with Rockingham County Conservation District staff.

Chair Hebert said the Board made changes to the ordinance to address two-resident homes as a result of the illegal “mother-in-law” apartments that were popping up in town, however they hadn’t increased the uplands area requirement. He said his concern was with the potential for increased footprints and residents per lot and the impact it could have on wetlands. Discussion ensued regarding how many square feet would be adequate to ensure reasonable yard space and avoid the development of houses, garages and driveways that filled uplands areas and were surrounded with wetlands.

Board member, Justin Richardson said they were also seeing developments where a combined calculation of uplands were within the front, rear or side setbacks so septic systems were pushed in and required a variance. He added that currently buffers could also be counted toward uplands, but they were in the no cut, do not disturb zone and it would not be good to have a house up against a buffer.

Mr. Morgan suggested that the Board carefully consider the scientific basis of what size dwellings lots could support. He said developers could say there were new septic technologies that could function on small, wet lots so he wanted someone from the Rockingham County Conservation Commission (RCCC) to talk with the Board on the subject, but they were not able to attend that evening. Mr. Pare asked if they should consider soil type and Chair Hebert said soil type was a factor for considering if a lot could support a septic system for a certain number of residents, but he also wanted to address the amount of living space around a home. Mr. Morgan said they could

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consider the space needed for typical uses in addition to houses that would include garages and swing sets, but they needed to be careful about telling people what they could do with their property. Chair Hebert said he was concerned with becoming a town where houses were on top of one another. Mr. Morgan said some towns required minimal acreage per lot.

Mr. Craig Daigle of Nimble Hill Road asked if they were suggesting the restriction of two-family houses and Chair Hebert explained that they were talking about property owners putting two-family houses on lots that didn't have sufficient uplands and yards. Mr. Daigle asked how a home could be expanded to a two-family house if there wasn't enough room on a lot and Chair Hebert explained that was what the Board was trying to address.

Chair Hebert said both Mike Cuomo from RCCC, Mark West, who did wetlands consulting for the Town and developers and their wetlands experts said their lots had been disturbed so it was difficult to identify natural wetlands from man-made wetlands, but in fact, most of the lots in town had previously been disturbed by agricultural or forestry use, so that was another reason for considering minimum lot size per family dwelling.

Chair Hebert asked Mr. Morgan if there was a requirement for backup septic sites and Mr. Morgan said DES required backup septic sites. Mr. Richardson said the subdivision regulations required that the septic area be twice as large as the septic system. Alternate Board member, Peggy Lamson said she hadn't been seeing backup septic areas on proposal plans. Chair Hebert said they could request that they be included.

Mr. Morgan said these were good exercises for housekeeping on the ordinances, but he thought the Board should focus on planning and policy decision issues in the Master Plan that determined the ordinances. Ms. Lamson agreed that the ordinances should coincide with the Master Plan. Mr. Pare said working on the Master Plan was a good idea, but cleaning up the ordinances would keep "sharp shooters" from taking issue with inconsistencies. Mr. Richardson said applicants could request variances and the ZBA needed a rational basis for their decisions so they could determine there was no hardship.

Mr. Richardson said the Master Plan referred to soil types in the area such as marine clays, which were inadequate for traditional septic systems, though engineers could argue that new technologies could overcome that issue so long as they had electricity to run the systems. He said what the Master Plan did not refer to was lot size required to maintain the rural character of the town. Mr. Pare said one of the issues that created a problem for high tech septic systems was a power outage. Chair Hebert agreed that the Master Plan also needed to be updated. He asked Mr. Morgan to edit the Master Plan for consistent references to soil types and maintaining rural character.

Mr. Richardson said the Master Plan only needed to point out the relationship between uplands and the rural area. He suggested the criteria for subdivisions expand on the uplands requirements and state that buildings and buffers not be included in the uplands and lots have sufficient space for dwelling accessories. Ms. Lamson agreed that the ordinance should go along with the Master Plan. Mr. Richardson said the

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subdivision approval criteria should be addressed. Chair Hebert said the criteria of 30,000 square feet of uplands for three-quarters of an acre was sufficient for a single residence, but that wouldn't be enough for a double residence. He said people often infringed on wetlands buffers over time, which was also an issue. Mr. Richardson said they needed to establish a balance between predictability and fairness. He said setting a standard of 30,000 square feet of uplands was predictable, but someone they might want to add a catchall to address where someone could slip through the cracks.

Mr. Richardson said some lots could be too small if buffers were included and Chair Hebert agreed. Mr. Pare agreed that anyone building a house without sufficient yard space could barely get down their steps before they were in the "do not disturb" wetlands buffer before in no cut buffer so they should make the 30,000 square footage of uplands outside the buffers. Chair Hebert said they also needed to consider that yard space would be relative when considering very large houses. Mr. Morgan said Mr. Pare's suggestion would only require a tweak to the zoning ordinance. Mr. Richardson said the criteria didn't focus on key issue of useable area in a lot so they needed to focus on that.

Chair Hebert asked the Board to consider what a reasonable family yard size would be and how much it should be increased for two families. Mr. Richardson said some communities used yield analysis, looking at uplands, slopes ledge and buffers and how many houses would fit. He said they could also consider cluster housing to leave as much open space as possible, but there was no mention of it in the ordinance. Ms. Lamson said she didn't like cluster developments.

Mr. Pare said there were not that many places left for development and suggested that they define usable upland in the ordinance and subdivision regulations to say every lot had to have 20,000 square feet of useable area excluding buffers and the housing footprint. Mr. Morgan said there was no way of knowing what size home a buyer would build when a landowner sold a lot. Mr. Pare said they would need to set limitations on the size of houses based on the lot. Chair Hebert said they would also need to consider the useable lot size for each additional family and Mr. Pare said they could use the same criteria for each family with a maximum of a two-family dwelling per lot. Chair Hebert said the useable area would need to be contiguous and asked that the Board come up with ballpark suggestions. Mr. Richardson said he would like to see Mr. Morgan come up with a recommendation. Chairman Hebert said they needed a clear definition of useable land. Mr. Morgan said they could clarify definition more, but right now he could work with a definition that defined uplands with the buffer and housing footprint.

B) Consider amending the Zoning Ordinance, as follows:

- 1) Amend Article V Section 3 by replacing the term "church" with "place used for public worship"

Chair Hebert said Mr. Morgan and Attorney Ratigan recommended replacing the word "building" with "place because worship could be conducted outside.

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Mr. Richardson said the change was a good idea to protect large assemblies that were currently allowed to operate near the industrial zone where hazardous chemicals were used.

2) Amend Article V Section 1A as follows: "together with recreational facilities"

Mr. Daigle inquired why the Board was suggesting these changes to the ordinance and Chair Hebert said the Board was not against small places of worship like the Meeting House, but they were concerned with mega-plex sites in the residential area. Mr. Pare said the Commercial zone provided adequate access and parking for larger church without disturbing the residential district.

Mr. Daigle asked if someone could build a large educational facility and Mr. Morgan said it was a good question. He said during the 2007 Town Meeting there was a proposal to prohibit schools in the residential zone as well. Mr. Richardson said both references should be cleaned up. Mr. Morgan said lots of ordinances originated in the 1920's when people walked to church and schools, but few do anymore and the Commercial zone was better suited than residential zones for larger gatherings and parking. Discussion ensued and it was determined that it would be best to remove educational facilities along with recreational facilities in the residential zone.

3) Amend Article X by deleting Section 4B(6), which is similar to Section 4B(7), and revising Section 4C as follows: "The construction of roads, access ways, driveways, water impoundment and water supply systems."

Chair Hebert said the ordinance was written because landowners were concerned at the time that they wouldn't be able to access their buildable lots through wetlands. Mr. Morgan said he was aware that the Board was split on the subject, but they had to clarify it to clear up the contradictions. Mr. Richardson suggested it might be easier to mirror the language in Section 6 rather than delete it.

Chair Hebert said he was concerned with the thought that someone might want to cross a vernal pool or prime wetlands to get to uplands if it was the only access. He said they also had to consider what to do to protect someone that had usable land. Mr. Richardson said identifying feasible routes was the criteria that worked. Ms. Lamson said the special exception also required a recommendation from the Conservation Commission.

Mr. Richardson said some residents at Town Meeting might perceive it as the Planning Board trying to take away their rights to develop property. Ms. Lamson said they needed to make it clear for residents. Mr. Richardson said the reference to driveways would be eliminated completely if they deleted Section 6. Mr. Morgan said they could do that, but the debate was whether to use the term driveway or access way. He suggested that they list the construction of roads, access ways, driveways etc to be all-inclusive. Mr. Richardson and Mr. Pare agreed that it should be consistent.

C) Consider amending the Subdivision Regulations, as follows:

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- 1) Delete Section 3C(3) regarding abutters fees.

Mr. Morgan said years ago they tried to eliminate the reference to the fee schedule, but this remnant remained. He said Board of Selectmen representative, Rick Stern was an advocate of revisiting the application and abutters fees because they were bargain rates at \$2 per abutter. Mr. Morgan said he had sample figures from other towns. He said this item wouldn't need to go to Town Meeting.

- 2) In section 3C(5), replace references to the Water Supply and Pollution Control Commission with "Department of Environmental Services."

Mr. Morgan said this was a result of the State agency changing their name.

- 3) In Section 3C(5) f, replace the reference to National Geodetic Vertical Datum (NGVD) with "North American Vertical Datum of 1988 (NAVD 88)."

Mr. Morgan said this would be consistent with FEMA's floodplain standards, which might change again so he was making this recommendation rather than be specific. He said they should also eliminate the 7' reference to allow the FEMA definitions of the 100year flood zone.

Mr. Pare suggested another paragraph that would refer to the water and the vertical data.

- 4) In Section 3D, replace references to RSA 36...with "RSA 676:4."

Mr. Morgan said this was to reflect changes in legislation. Mr. Richardson read through pages 8 and 9 and said the language didn't quite mirror what the statute asked the Board to do. Mr. Morgan said he would edit to mirror the language and suggested the reference to the RSA's, which they were bound to anyhow. Discussion ensued whether to eliminate the specific numbers or eliminate the reference all together. Mr. Richardson said references hadn't changed that frequently and there was some value to pointing to the correct citation. Mr. Morgan said the Board could decide and let him know.

### D) Proposed land uses in the Office Zone

Chair Hebert said restaurants came into the zone since the last ordinance change, but since found out other uses could come in and they should have made the uses more conforming while keeping the grand fathered uses. He said currently office use, biotech research, light manufacturing, hospitals, medical clinics, nursing homes, veterinarians; conference centers and schools were possible uses. He said there were concerns for anything that allowed for large gatherings of people near the industrial zone, such as conference centers, nursing homes, places of worship and schools,

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which would be better places in the commercial zone. Mr. Morgan said he thought most of the industrial zone was at a distance from those uses and he was afraid they would be tossing the baby out with the bathwater. Chair Hebert said the current zoning could allow for a greater mix and Mr. Pare said he was thinking of the industrial accident that occurred in Bopal, India. Mr. Richardson said he understood the importance of separating industrial uses from residential areas, but he wondered how industrial operations with 200 workers would be any different than these other uses. said also wondering, thinking about Shattuck Way and looking at uses. Mr. Pare said people in industrial uses with greater mobility with their own vehicles could follow evacuation plans better than people in hospitals and nursing homes or young children in educational or religious daycare centers, however he wasn't sure a conference center would hold the same argument. Mr. Richardson said the addition of large groups of people might still be a consideration and Chair Hebert agreed that they might look at conference centers with gatherings beyond a certain size. Mr. Pare suggested they only consider gatherings of fewer than 30 people. Mr. Richardson agreed that public safety was the issue. Ms. Lamson said she was also concerned with medical clinics.

### E) Pork chop lots

Board member, Justin Richardson said they were also seeing developments where uplands were within the front, rear or side setbacks so septic systems were pushed in and required a variance, but didn't address contiguous "pork-chop" lots. Mr. Stern said the requirements eliminated most of the issue. Mr. Pare said there were a few cases where pork chop lots were beneficial, as was the case with the strip of land that the NH Fish and Game owned along the private road near the marina.

Chair Hebert said there had been another issue with a lot that had frontage on both Hannah Lane and Nimble Hill Road, but the current ordinance was written to require frontage on just one street. Mr. Pare said the lot had adequate contiguous frontage from one street to the other and everyone agreed that the ordinance should be revised for clarity.

Mr. Richardson read Attorney Ratigan's letter regarding Article 6, Table 6-1, which said road frontage must be 200 feet, but didn't address contiguous frontage on the corner of two public ways. Mr. Richardson said they needed to be consistent in their references in the ordinances and driveway regulations. Chair Hebert asked Mr. Morgan to make recommendations on identifying a lot front, curb cuts and the frontage issue based on the letter from Attorney Ratigan. Mr. Richardson said he trusted Mr. Morgan's judgment after talking with Attorney Ratigan. Need too be careful of Attorney Ratigan's letter.

### F) Application Fee Schedule

Chair Hebert he thought they could set fees for site review applications, engineering reviews, legal fees and escrow bonds, but they couldn't charge an additional fee for the work of salaried, full-time Town employees. Mr. Richardson said

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couldn't recover staff costs unless they could attribute it to something, but he had read that some Planning Boards required payment for administrative expenses and the review of documents required for particular applications though most towns were moving away from impact fees. Chair Hebert said the Town was allowed to seek reimbursement for reasonable administrative costs and consultants. He said they did consult with fire, police and traffic experts and they had sometimes charged impact fees for schools and roads. He said Mr. Richardson added that there was also an air pollution fund. Ms. Lamson said applicants shouldn't submit applications for review unless they could afford to pay the application and consultant fees.

Mr. Morgan said Mr. Stern would provide a proposal for the fee schedule. Mr. Pare said they should delete 3C(3) and address the fees when they received the schedule.

**Discussion:** Chair Hebert said Bruce Belanger would be going before the ZBA next month and Town counsel, Attorney John Ratigan would be in attendance, but Planning Board representative, Justin Richardson could not be in attendance. He suggested Jim Weiner be made an alternate representative, but Ms. Lamson asked how he could be a representative for the Planning Board when he was already a ZBA board member. Mr. Richardson said he couldn't represent the Planning Board because he had already participated in the subdivision application, but chair could select an alternate. He asked if the Board had to take a vote, and Chair Hebert said the RSA allowed him to assign an alternate without a vote.

**Adjournment:** Peggy Lamson motioned to adjourn, and Jack Pare seconded. All were in favor and meeting adjourned at 9:05 pm

**Next Meeting:** Monday, October 6, 2014

**Respectfully  
Submitted by:** Jane K. Kendall, Recording Secretary