

Town of Newington, NH

PLANNING BOARD

Meeting Minutes, Monday, November 24, 2014

Call to Order: Chair Denis Hebert called the November 24, 2014 meeting at 6:33 PM.

Present: Vice Chair, Mike Marconi; Bernie Christopher; Chris Cross; Jack Pare; Justin Richardson; Alternate Member, Peggy Lamson and Ken Latchlaw; Jane Kendall, Recorder; and Thomas Morgan, Town Planner

Absent: Board of Selectmen Representative, Rick Stern

1) **Public Hearings** on proposed amendments to the land use regulations:

A) **Amend the Zoning Ordinance** as follows:

1) Revise the definition of Frontage in Article II as follows:

Frontage: Shall mean the width of the lot bordering on the public right-of-way. In those instances in which a property abuts multiple public ways, the Planning Board shall determine which side of the parcel is frontage, for purposes of satisfying the zoning ordinances minimum frontage requirements, and which side of the parcel is frontage for purposes of establishing "the street giving access to the lot", as that term is used in RSA 674:41,III.

Mr. Richardson said in reviewing page 2 of the October 20, 2014 Meeting Minutes, he thought it had been decided to delete "for purposes of satisfying the zoning ordinance's minimum frontage requirements, and which side of the parcel is frontage", which was not reflected on the agenda. Mr. Morgan said his notes concurred with Mr. Richardson's findings. Chairman Hebert added that the Board had agreed that 200' of frontage could be around a corner of two public roads so long as it was contiguous and everyone agreed. Chairman Hebert said the Board would still have the right to determine the safest place for curb cuts.

Alternate Board member, Ken Latchlaw asked if an unrestricted road, such as a Class 6 road was also considered a right of way and Mr. Morgan said Newington got rid of Class 6 roads some time ago. Mr. Richardson said so long as the Board approved a subdivision, the State statute said they could approve lots with private roads, including those with no public road frontage on a case-by-case basis.

Mr. Cross said they could give safety reasons and adding verbiage complicated issues. He said most people that read regulations and zoning would assume frontage

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meant on a public road with frontage and a front setback. He said it would get confusing when adding a requirement to determine access through frontage. Mr. Morgan agreed that they were two separate issues that should be kept separate to avoid confusion. He said the Board wanted written backup, but reminded them that they were the Planning Board and their decisions were final.

Mr. Richardson agreed that the biggest problem was not in the formal subdivision review or site plan review. He said the law stated since the mid 1990's that frontage had to come from frontage so there was no question there, but they were trying to address an issue for a corner lot that had less than 200' of frontage on either public road. He suggested they put the requirement in the driveway permit requirements, which would default to State law and be sounder, but could still be waivable. Mr. Cross said he thought the Planning Board should have purview over curb cuts. Mr. Morgan said should declare frontage best place for access. Mr. Morgan said the State said the curb cut had to be at the at best place for access. Mr. Richardson said an applicant could go before the Planning Board for determination of the curb cut if they had street frontage on two corners. Chairman Hebert suggested they capture the RSA in words.

Discussion ensued regarding what might constitute a "public" road for meeting frontage for a safe curb cut. Board member, Jack Pare said the Board could determine if the frontage on a Town road. Both Mr. Morgan and Chairman Hebert said that would limit Woodbury Avenue. Ms. Lamson said the State had asked the Town to take Woodbury Avenue over as a Town road. Mr. Richardson said the State legislature said a Class 5 or better highway determined a public road, but the Spaulding Turnpike was a limited access highway and by law was not allowed. Chairman Hebert said the Zoning Ordinance specified a Town road or public right of way.

Discussion ensued regarding definitions of contiguous versus continuous. Chairman Hebert suggested they use the word "contiguous" instead of the word "continuous", which might suggest a direction.

*Mr. Richardson moved to **approve** the amendment of the Zoning Ordinance, revising the definition of Frontage in Article II as discussed and amending table the table to agree so that frontage may be along one or more accessible, contiguous public road. Vice-Chair Marconi seconded the motion.*

Mr. Cross said there still wasn't direction in the Ordinance qualifying frontage and that a driveway had to go through frontage. Mr. Pare added that the Board would also need to make the determination if a curb cut could go in more than one place. Mr. Richardson referenced the driveway statute RSA 236:13:IV. Mr. Morgan said the Board already had authority to determine frontage.

*The motion **passed** everyone in favor except Mr. Cross.*

2) **Amend Article V Section 1A** as follows: "together with recreational, educational, and religious facilities.."

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3) **Amend Article V Section 2B** that lists permitted uses in the Office Zone, as follows:

B - Principal Uses Permitted:

- (1) offices, research and development facilities, biotech facilities, light manufacturing, warehouses, ~~hospitals~~, medical clinics, ~~nursing homes~~, veterinary hospitals, ~~schools~~, hotels of 3 stories or higher, ~~conference centers~~, and facilities to treat the developmentally disabled.

Discussion ensued regarding other uses. Chairman Hebert said the objective was to eliminate uses from the Office Zone where large groups of people would gather near the abutting Industrial Zone and avoid issues with evacuation in an emergency. He said Great Bay Services and a hotel approval was grand fathered. He noted that Federal regulations trump State and town regulations, other uses could go in the Commercial Zone, which was similar. Mr. Cross agreed that they should eliminate overnight uses with no way out in case of an emergency in the nearby Industrial Zone.

Mr. Cross asked if the change would prohibit home schooling for residents in the area and Mr. Richardson said home schooling would be accessory use to the home, which was allowed so long as there was no advertising of a business bringing others in.

*Mike Marconi moved to **amend** Article V Section 2B listing permitted uses in the Office Zone with the recommended deletions as discussed. Peggy Lamson seconded and the motion **passed** with all in favor.*

Mr. Morgan informed the Board that the State Legislature had amended RSA 675:7 to take burden off real estate developers in the name of enhancing private property rights so that notification of changes to the Ordinance would have to go out to everyone in that zone. He said it would be a large mailing and proposed that he hire Recording Secretary, Jane Kendall to assist in mailing the Public Notice for items 3, 4 and 5, which would be subject to the new law, effective July 10, 2014. The Board agreed.

4) **Amend Article V Section 3B** by adding the following to the list of permitted uses in the Commercial Zones: hospitals, nursing homes, schools, and conference centers

Mr. Cross said this would move the items previously listed under the Office Zone in Article V Section 2B to the Commercial Zone.

*Mr. Richardson moved to **amend** Article V Section 3B by adding the following to the list of permitted uses in the Commercial Zones: hospitals, nursing homes, schools, and conference centers. Vice-Chair Marconi seconded the motion and all were in favor.*

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5) **Amend Article V Section 3** by replacing the term “church” with “place for public worship.”

Vice-Chair Marconi moved **to amend** Article V Section 3 by replacing the term “church” with “place for public worship and Mr. Cross seconded the motion.

Mr. Latchlaw asked why they were not keeping the terminology and Chairman Hebert said the term “church” was generally associated as a Christian phrase and they had to use a term that include other religions’ places of worship. Mr. Latchlaw said his concern was that might include a group that worshipped evil and asked why they couldn’t use terminology that had more of a positive connotation. Chairman Hebert agreed, but said there had been a group that filed a Federal lawsuit against a town to protect their right to gather and worship as was their Constitutional right, but the Board had already established that the Commercial Zone would be the best location for gatherings. Mr. Richardson agreed that they had to allow places for public worship and added that all Statutes had attorney fee provisions that prevented communities from evaluating what forms of public worship would be allowed. Mr. Pare said Town counsel, Attorney John Ratigan had given the Board this recommendation.

Mr. Latchlaw said there had been cases of groups in other communities claiming they were a place of worship to avoid taxation. Mr. Richardson said this was not what the Board was being asked to address, but RSA 72:23:V listed the definition of a charitable organization and towns had to approve the exemption, which could still be appealed in Superior Court.

*The motion **passed** with all in favor.*

6) **Amend Article X** by adding the following to Section 4B(6) “contingent upon the issuance of a Special Exception pursuant to Section 4C below”

Chairman Hebert said this item was in response to concerns with the wetlands ordinance and access.

Mr. Richardson pointed out that the wording on the agenda was not the same as had previously been discussed on page 6 of the October 20, 2014 meeting where the wording had been changed to “by Special Exception pursuant to Section 4C below”. Ms. Lamson agreed that they had discussed the matter at the previous work session.

Mr. Richardson said he thought it would be better to say a Special Exception was allowed because the criteria for the Special Exception was clearer to determine if there was no other feasible access to get to a non-wetlands barrier.

Mr. Morgan said he passed out a proposal at last meeting to take out 6, 7 and 4C to simplify and take the debate out. Discussion ensued regarding potential conflicts between 4B(6), 4B(7) and requiring a Special Exception.

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*Jack Pare moved to **amend** Article X, Section 4B(6) by making it read the same as Section 4B(7). Mike Marconi seconded the motion and all were in favor.*

7) **Amend Article X**, as follows:

SECTION 5 - Minimum Lot Size Requirements

Areas designated as jurisdictional wetlands may be used to fulfill no more than 50% of the minimum lot size required by the Zoning Ordinance, provided that the upland area includes at least 30,000 contiguous square feet of land area outside of buffers and setbacks required by Sections 6 and 7 below.

Chairman Hebert said this item was to make adjustments to the requirement of uplands for duplexes versus single-family residences. Mr. Richardson pointed out that this item had been previously discussed on page 6 at the October 20, 2014 meeting and they had decided that 30,000 square feet would be outside the wetlands buffer and property line setbacks, but would exclude the 100' setbacks from some wetlands.

Chairman Hebert said that would be for a single family dwelling, but they had discussed making it 45,000 for a dual residence in one building. Mr. Cross said there would be some grace because two homes had to be attached, but it acknowledged that the structure would be larger. He said the building inspector or Mr. Morgan could send applicants to the Planning Board or ZBA if there're were any questions.

Mr. Morgan said there were too many changes from the notice on this item to adopt and they would need to schedule another public hearing.

*Mr. Richardson moved to **amend** Article X, SECTION 5, Minimum Lot Size Requirements as presented and add "...45,000 contiguous square feet for a two-family dwelling and go to a second hearing. Jack Pare seconded and all were in favor.*

8) Proposed Amendments to the Floodplain Regulations

Mr. Morgan said he and Mr. Pare had worked on the mapping so that only two houses on Patterson Lane were remaining in the flood plane. Mr. Cross asked if the could cite a reference so they wouldn't need so many changes and Mr. Pare said it was a FEMA requirement.

*Vice-Chair Marconi moved to **amend** the proposed amendments to the Floodplain Regulations. Peggy Lamson seconded the motion and all were in favor.*

B) Amend the **Subdivision Regulations**, as follows:

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

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

3) In **Section 3C(5)f**, revise as follows:

~~f - the limits of the 100-year flood zone, i.e. all land along the Great Bay Estuary that is situated between the shore and 7 feet above National Geodetic Vertical Datum (NGVD),~~ as delineated by FEMA.

4) Add the following to **Section 3C(5)**:

h – Topography is to be referenced to North American Vertical Datum of 1988 (NAVD 88).

5) Revise **Section 3D** as follows:

~~(1) Formal consideration of the application will not begin until the Planning Board or its agent has received sufficient information to allow the Board to make an informed decision, in the proper time period, per RSA 36:23.~~

~~(2) A completed application will be received only at a regularly scheduled public meeting of the Board which has been properly noticed as per RSA 36:23 I(d), see Town Regulations, Section 3.F.~~

(1) Formal consideration of the application will not begin until the Planning Board has determined that the application is complete. A completed application means that sufficient information is included or submitted to allow the board to proceed with consideration and to make an informed decision, as per RSA 676:4(l)(b).

Mr. Richardson said he thought they could approve all the subdivision regulation changes together as previously discussed and everyone agreed

*Mr. Richardson moved to take the close the public hearing and **amend** all the Subdivision Regulations as listed on the agenda under section B) as discussed. Mike Marconi seconded the motion and all were in favor.*

6) Revise the Planning Board's **Fee Schedule in Section 3D(3)**, as follows:

b - Schedule of Fees - **Subdivisions**:

Lot Line Adjustment: \$100 **\$300**

Minor Subdivision (3 lots or less): \$200 ~~\$600~~ **\$1,000**

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Major Subdivision (more than 3 lots): ~~\$500 plus \$100/lot~~
~~\$1,500 plus \$300/lot~~
\$1,500 plus \$500/lot

C) Amend the **Site Plan Review Regulations in Section 7F**, as follows:

1) Application Fee for New Construction:	\$200 ; Change of Use:	\$50
	<u>\$600</u>	<u>\$150</u>

Vice-Chair Marconi said he was not anti-growth, but he thought the changes were still too low because impact fees were becoming an issue for fire, police and school in many towns and they should be similar to other communities. Chairman Hebert said there were impact fees can apply. Mr. Morgan said impact fees were complicated and a long, expensive process, but similar to impact fees they could charge applicants with drainage and engineering fees if necessary. Chairman Hebert added that they had previously charged some applicants with air mitigation funds to contribute toward bus stops, but Town leadership had retracted it as a liability, which didn't look good when they had to return the contribution so he was hesitant to do so in the future.

Mike Marconi moved to close the public hearing and accept agenda item C) to amend the Site Plan Review Regulations in Section 7F, 1) Application Fee for New Construction. Bernie Christopher seconded and all were in favor.

2) Preliminary Discussions on other proposed amendments to the land use regulations

Mr. Richardson discussed the form factor calculation he emailed Mr. Morgan for Board members to review. He said it was a mathematical approach that would create standards of approval for subdivision while still providing the Board with more flexibility.

Chairman Hebert said he was concerned with the appearance of a lack of transparency. Mr. Richardson said everything would be listed under the Subdivision Regulations. Mr. Morgan said they would not be required to go to Town Meeting for this change. Chairman Hebert said he was still concerned there were too many changes in one year. Mr. Pare said they needed to make the changes because they found there were too many chinks in the Town's armor from developers who were trying to do too much near wetlands. He said they needed to protect the community from inadequate subdivisions. Chairman Hebert said he was still concerned with unintended consequences from getting over complicated so he wanted to give it more. Vice-Chair Marconi agreed that he would like to read more. Ms. Lamson said they needed to be extremely specific or they would have problems

Mr. Pare suggested doing perimeter and area identifications on selected lot proposals to see how the form factor would work on local examples. Mr. Morgan said

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the proposal was superior to what they had and he would plug it into the Ordinance for examples.

Additional Discussions and Announcements:

Mr. Morgan informed the Board that the Langdon Library had proposed a new way finding sign for the Historic District on the corner of Nimble Hill Road and Little Bay Road. Mr. Richardson said they could let the Board of Selectmen decide on the Town's right of way. Chairman Hebert said they also needed to look out for safety or detracting from surrounding properties.

Mr. Morgan also informed the Board that COAST's "Route 7" that served Newington, Greenland, Stratham and Exeter was not doing well financially. He said few riders from Greenland and Stratham were using the service, but he thought it would probably survive running between Exeter and Newmarket. He said the distribution of costs to the remaining towns would probably increase.

Mr. Cross wondered if they might consider altering their Route 7 in the future to connect Arboretum Drive for Pease Tradeport, Woodbury Avenue for businesses and retail, and come past the Langdon Library enroute to South Newington to Greenland, Stratham Exeter and back. Mr. Richardson said he thought the service in Newington was for commercial areas and there weren't enough riders to support the bus line going through the residential areas. Mr. Morgan said that was how they were running the business for the last thirty years. Mr. Cross said providing a bus service in to town and the library for students, the elderly and others who did not have vehicles would be a valuable return for the town's contribution. He said it was also possible that zoning in Newington might change one day and there might be a retirement community in South Newington one day as well. Mr. Morgan said it was an intriguing suggestion and he would bring the subject up at the next meeting.

Announcements:

Mr. Morgan said he would discuss his impressions on the climate change seminar he attended on Oct 27, 2014 at a later date.

Minutes:

Mr. Morgan commented that the building inspector had said the minutes of November 10, 2014 regarding the Lozuaway curb cut were not correct because the motion said they were giving up two driveways instead of one. Recording secretary, Jane Kendall said those were the initial motions that were retracted and did not pass, and after further discussion, the final motion granted the new curb cut on Old Post Road and gave up the grand fathered curb cut.

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Vice-Chair Marconi moved to approve the Minutes for the Nov 10, 2014 meeting. Peggy Lamson seconded, and all were in favor.

Adjournment: *Vice-Chair Marconi motioned to adjourn, and Bernie Christopher seconded. All were in favor and meeting adjourned at 9 p.m.*

Next Meeting: Monday, December 8, 2014

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