

**Planning Board
Board Room, Municipal Building- 7:30 pm
March 20, 2007**

In Attendance:

Members: Nancy Collier, Bill Dietrich, Judith Esmay, Charles Faulkner, Jim Hornig, Michael Mayor, Kate Connolly

Alternates: Bill Baschnagel, Joan Garipay

Staff: Vicki Smith, Jonathan Edwards

Others: See attached sheet

1. Public Hearing on Proposed Zoning Amendments

COLLIER announced that this would be the last public hearing on the proposed zoning amendments. State statute restricted the Board from making substantial changes to the amendments and still put them on the Warrant for Town Meeting; she recommended tabling a dubious or unsettled amendment. The comments of Laura Spector and Walter Mitchell, Town counsel, on the various amendments were made available.

Detached Accessory Dwelling Units, RR:

Amend Table 204.7 by adding "accessory dwelling unit, detached" to the list of permitted uses in the "RR" zoning district and amend Section 210 by adding standards for detached accessory units in the "RR" zoning district and clarifying the parking standard and necessary permit for attached accessory units.

MAYOR said the issue with this amendment was whether it was reasonable to say that a two-bedroom unit would be functional for someone who might otherwise be relegated to assisted-living. CONNOLLY said accessory units in the "SR" district were intended to be a very contained and almost invisible. The "RR" district has more space for more rooms.

Joyce Noll asked for the definition of "an existing accessory unit," how this would impact future homeowners of property that did not have an existing unit, and how the land would be assessed if it contained two taxable properties. COLLIER said "an existing unit" was one in existence on May 8, 2007, Town Meeting day. Mr. Edwards said the amendment would restrict future homeowners from adding accessory units after May 8, 2007. He pointed out that the "RR" district already allowed two-family dwellings and said this would broaden people's domestic rights without diminishing any that already exist. CONNOLLY said the value of land would remain the same because it was always eligible for two living units.

Doug McIlroy said if it was not for the pre-existing structure provision he would regard this as a complete repudiation of last year's zoning change, to allow a second building on every "RR" lot. He said this was the opposite of grandfathering and would appear as being very unfair a few years down the road.

It was moved by FAULKNER, seconded by DIETRICH, to bring this article to the Town Warrant. The motion PASSED UNANIMOUSLY.

Remove Accessory Driveways:

Amend Section 210.1A to allow up to two driveways for each multiple housing unit or any group of two or more attached dwelling units in a planned residential development.

HORNIG asked if anyone could visualize a situation where this would be awkward. MAYOR said no and commented on the Board's extensive review of this topic. Mr. Edwards reminded the Board that they would still have the opportunity to correct any that might occur as a part of site plan review.

It was moved by CONNOLLY, seconded by MAYOR, to put this article on the Warrant. The motion PASSED UNANIMOUSLY.

Accessory Uses – Gross Floor Area:

Amend Section 210.2 in order to clarify its application and provide for more reasonable treatment of accessory uses. The proposal is to retain the permitted gross floor area of accessory buildings in the RO, GR and SR districts at 25% of that of the principal building, but to impose no such limit in the RR zoning district.

COLLIER pointed out an error in the first line of Number 6. She said the original Ordinance reads "The gross floor area of all buildings devoted to accessory uses on any premises may not exceed 50 percent..." not 25%.

It was moved by CONNOLLY, seconded by FAULKNER, to put this article on the Warrant with the language contained in Number 6. The motion PASSED UNANIMOUSLY.

Non-conforming Structures Zoning Permit:

Amend Section 803 to enable the Zoning Administrator to grant permission for additions to non-conforming structures with respect to lot line setbacks, if the non-conforming structure extends no closer than the existing structures. The administrator is directed to notify abutters when such a permit is granted. Appeal provisions are included.

DIETRICH suggested the Board revisit this proposal based on Town counsel's comments.

It was moved by CONNOLLY, seconded by FAULKNER, that this article not be carried forward. The motion PASSED UNANIMOUSLY.

Variance criteria:

Amend Section 1006.1 by replacing it with new criteria for granting a variance.

Mr. McIlroy provided a redraft of Section 1006.1 E intended for better understanding. Mr. Edwards said the wording in the proposed amendment originated in Supreme Court case law. COLLIER spoke in favor of adopting the current wording for compliance purposes. BASCHNAGEL said the State Supreme Court continues to settle cases that call into question variance criteria. He recommended the wording, "Variances will be granted in accordance with current case law." Ruth Lappin, Chair of the Zoning Board of Adjustment, said the ordinance should adequately explain to an applicant what is needed for the granting of a variance. Mr. Edwards agreed; this was a matter of convenience to the public. COLLIER said it would be prudent for the Board to review Mr. McIlroy's handout over the course of the next year.

COLLIER commented on the ZBA's reliance on the zoning district objective statements when considering whether a variance is consistent with the spirit of the ordinance. She said the Planning Board's statements were not always clear or appropriate to the current zone. She asked that this issue be a priority for the Planning Board in the coming year.

It was moved by CONNOLLY, seconded by DIETRICH, to put this article on the Warrant. The motion PASSED UNANIMOUSLY.

Church Use in OL:

Amend Table 204.3 by adding "Church" as a new permitted use in the OL zoning district.

COLLIER said she did not consider the "OL" to be a well-served area in terms of transportation or pedestrian access. She suggested the results of the Route 120 Corridor study, currently in progress, could provide insight on the matter.

HORNIG asked if this could be labeled as "spot zoning". Mr. Edwards said the amendment would change the permitted uses in the entire zoning district, not just to one parcel within the district. BASCHNAGEL pointed out that churches were allowed by Special Exception in a number of districts in town. He said the proposal reads very narrowly of the fact that opportunities for churches are much broader in town than is suggested.

Bill Clauson, of 10 Buck Road, said it was spot zoning to put a church on Buck Road. The only other "OL" area in town was CRREL. He said the idea of adding a large church and 150 space parking lot to this area would be a high volume mistake. He described the Buck Road community as being low traffic volume offices and retirement home. He spoke of the present dangers at the intersection of Buck Road and Route 120. Mr. Clauson said the use of this church, as presented to the ZBA, included weekday hours for camps and classes, not just weekend services. He was skeptical that public transportation would be widely used; that was not the practice of the current tenants. He disagreed with the applicant's assertion that this amendment supports the visions of the Master Plan. Mr. Clauson said the Master Plan does not call for significant buildout on Buck Road or to develop it into a village center.

Mr. Clauson provided a letter from J. Michael Donovan, of 16 Buck Road, in opposition to the amendment which was read for the record by Vicki Smith. In the letter Mr. Donovan expressed concern for the impacts to the Route 120/Buck Road intersection and questioned the need to reduce the inventory of already scarce land intended for office development when ample alternatives for a church site presently exist.

Gregg Baker, of Buck Road, shared his concern for increased runoff that would result from the 150 space parking lot. Aesthetically, he questioned the project's appearance. He said his office would look at it directly.

It was moved by HORNIG, seconded by MAYOR, that this article not be carried forward. The motion PASSED UNANIMOUSLY.

Height in the "F" District:

Amend Table 204.8 to allow non-habitable outdoor recreational structures in the "F" district to be built to the maximum height of 40 feet.

BASCHNAGEL said he could envision a number of structures that might fall under the purview of "outdoor recreation" that would not be appropriate for the "F" district but would be permitted with this change. Larry Kelly, of Dartmouth College, said it was appropriate to draw the distinction between "outdoor recreation" and other permitted uses in the "F" district. Zoning Board approval was required to build outdoor recreation structures. Ms. Smith said the words "non-habitable outdoor recreation structures" were pretty limiting.

HORNIG asked why this was needed. Andy Harvard advised of his proposal for a horse ring in the "F" district which was meant to enhance the recreational use of that area for the entire community. ESMAY said the Board was concerned about what else would be allowed if the door were opened for ropes courses. Ms. Noll asked if these types of structures/uses could be accomplished with a variance, rather than changing the entire zoning. Mrs. Lappin said she could not answer that question without knowing all the facts of an application. Dave Cochrane said this proposal was trying to find a general solution to a specific problem. He said he felt a variance would be more appropriate and would remove Baschnagel's concerns about the generality of the proposal.

It was moved by MAYOR, seconded by ESMAY, to move this to the Warrant with the excision of the comma before the word "only". The motion PASSED UNANIMOUSLY.

Removal of Construction Standard Reference:

Amend Section 209.4 E (1) to remove the reference to Class A fire resistant construction.

COLLIER said the proponent of this amendment is the Planning & Zoning Office.

No comments or issues were raised by the Board or public for this amendment.

It was moved by CONNOLLY, seconded by DIETRICH, to put this on the Warrant. The motion PASSED UNANIMOUSLY.

Emergency Generator Noise:

Amend Section 323.3 by removing the exemption for adherence to the noise standards during testing or other planned operation.

Mr. Edwards said Lorraine Pfefferkorn, proponent of the amendment, was concerned with the noise produced while testing generators, not from emergency operation. HORNIG suggested amending the text to read, "Safety signals, warning devices, emergency relief valves, emergency generators, and other emergency equipment when in operation due to an emergency; *testing or other planned operation of emergency generators is not exempt and shall take place only during the day as defined in Section 323.1 B.*" CONNOLLY warned that this could be construed as a substantive change. Staff was asked to consult Town counsel for verification.

It was moved by MAYOR, seconded by FAULKNER, to move this forward to the warrant with the clarification as described above.

Mr. Kelly said the proposal was to change only the emergency generator aspect. He cautioned the Board from applying this to other emergency equipment which had always been exempt. CONNOLLY said this was too much of a change from the current text. MAYOR said the proposed wording in the motion was acceptable and should qualify as a clarification.

BASCHNAGEL questioned whether the noise levels of the Town's generators were in compliance. He said he was not sure the taxpayers were prepared to pay for them to be, if they were not currently. Mr. Edwards said it could be argued that those generators would be grandfathered since they were installed prior to the adoption of this part of the ordinance.

GARIPAY suggested deferring this for a year to get the language right and perhaps make it possible to address this as a part of site plan review. COLLIER said the Planning Board could only influence commercial projects. They did not have jurisdiction over residential installations.

The motion to move this forward to the warrant with the clarification as described above PASSED UNANIMOUSLY. If the clarification is deemed a substantive change, this article will not go forward.

Wetlands Updates:

Amend Sections 702.4, 702.5 and 702.6 to clarify the local wetland, waterbody, intermittent stream and setback jurisdiction.

MAYOR said incorporating Town counsel's recommended changes would make this so profoundly altered that it could not be moved to the Warrant. Mr. Edwards said the Board could make substantive changes at the current meeting, if the members were willing to hold another public hearing for a final review. HORNIG asked about potential consequences of tabling this for a year. Mr. Edwards said the wetlands would be protected by State law only. Ms. Smith said she would not want to rely on the State to enforce people to move structures from within a wetland. CONNOLLY said counsel's solutions were pretty simple. Mrs. Lappin reminded the Board of the suggestion of Michael Hingston, Zoning Board member, to go back to the ordinance as it was written in 2005 during the one-year interim. That version provided more protection than exist today. Mrs. Lappin implied that the new wording created confusion.

It was moved by ESMAY, seconded by DIETRICH, to move this article to a public hearing on April 3, 2007 as worded by counsel with the exception that Section 702.5 C will not be deleted but be amended to omit the word "no" from the second line.

GARIPAY asked if public input would be allowed after the April 3rd public hearing. COLLIER said it would not and added that all language changes must be made at the current meeting. The proposed changes were as follows:

702.4 Prohibited Activity **and Structures** in Water Body, Wetland, Intermittent Stream, or Water Body or Wetland Setback:

~~Unless otherwise permitted pursuant to Sections 702.5, 702.6 and 702.7, all~~The following activities **and structures** are prohibited within any intermittent stream, wetland, or water body, or within 25-75 horizontal feet of a wetland or water body. ~~No salt storage shed, auto junkyard, solid or hazardous waste facility, bulk chemical storage, or the use of chemical lawn fertilizers are prohibited within any waterbody, wetland or intermittent stream or within any waterbody or wetland setback.~~

702.5 Activities **and Structures** Subject to Special Exception in Water body, Wetland, Intermittent Stream, or Water Body or Wetland Setback:

~~The following activities are prohibited unless~~ require a Special Exception ~~is granted~~ pursuant to the provisions of Section 702.6 ~~or unless an Administrative Permit may be obtained pursuant to Section 702.7~~ **The following activities and structures may be permitted by Special Exception, if the standards of Section 702.6 are satisfied.**

- A. Within any wetland, intermittent stream, or water body or within 25 horizontal feet of any wetland or water body, ~~only~~:
 - 1. Water dependent structures and uses such as a dam, dock, pier, wharf, boat house or other structure and use which requires a waterfront location and which would be functionally impaired if required to comply strictly with the water body and wetland setback.
 - 2. Driveway, street, forestry or agricultural road, **walkway, bridge, pedestrian trail**, drainage structure, or an essential service distribution system.
 - 3. Excavation, dredging, filling, or grading.
- B. Within an intermittent stream and in the area 25 feet to 75 horizontal feet from any wetland or water body, ~~unless an Administrative Permit may be obtained pursuant to Section 702.7~~:
 - 1. Any structure, parking facility, parking space, street, liquid fuel storage, or alteration of terrain by excavating, filling, dredging or grading; provided, however, that no Special Exception or Administrative Permit shall be required for excavating, filling, dredging or grading of an area less than 5,000 square feet, located solely within an area located in the outer 50 feet of a wetland setback or water body setback, but not within a wetland or water body or within 25 horizontal feet of a wetland or water body.
- C. ~~Within any wetland or water body, or within 125 horizontal feet of any wetland or water body: No leaching field or any part thereof.~~
Exemption: ~~For projects that involve no increase in lot coverage and no alteration of terrain in the intermittent stream, wetland or water body setback, but result solely in a change in the building mass or volume, no Special Exception is required.~~

702.6 Special Exception:

~~The Board of Adjustment may grant a Special Exception for any proposed use otherwise violative of Section 702.4 or 702.5. In granting or denying the Special Exception the Board of Adjustment shall be guided by the following standards, and the burden of demonstrating satisfaction of those standards, including the use of mitigation measures if needed, shall be upon the applicant:~~

.....

Tom Linell asked if the existing wetlands ordinance defined "drainage structure" or if it referred to culverts only or to water burrows. COLLIER said it was not defined and suggested the Wetlands Update Committee should review those issues. Ms. Smith recommended referencing uses and structures instead of activities in the re-write.

ESMAY suggested deleting "No" from Section 702.5 C where it currently reads, "*No leaching field or any part thereof*".

The motion to move this article to a public hearing on April 3, 2007 as worded by Town counsel with the exception that Section 702.5 C will not be deleted but will be amended to omit the word "No" from the second line PASSED UNANIMOUSLY.

FEMA Amendments:

Amend Article IX Definitions, Sections 202, 701.2, 701.4 B, 701.7, 701.9, 701.10 and 1006.3 to incorporate revised floodplain management language as required by FEMA regarding new flood plain maps, notice and submission requirements, building standards, definitions and variance criteria.

No comments or issues were raised by the Board or public regarding this amendment.

It was moved by CONNOLLY, seconded by MAYOR, to put these on the warrant. The motion PASSED UNANIMOUSLY.

Hilltops and Ridgelines Protection in RR and F districts:

Amend Sections 202, 204.7 and 204.8, 206.5 and 702.10 to provide objectives for and standards for regulating the placement of structures in hilltop's and ridgelines areas as shown on a map to be added to the zoning ordinance.

CONNOLLY said this was too important to rush through and suggested tabling it for one year pending further study. MAYOR agreed this was critically important and should be tabled. DIETRICH also agreed. ESMAY expressed concern that if it were not done correctly it might create additional problems. Mr. Edwards said this was the sole surviving topic the Rural Planning Group asked the Board to consider. COLLIER suggested creating a formal sub-committee to conduct the study.

HORNIG spoke in favor of putting this on the Warrant. He said he did not think it was likely to cause any damage being there for a year. Things could be learned from cases that might come forward. CONNOLLY said that would burden the Zoning Board with regulations which were at best imprecise. COLLIER said she was concerned about the corresponding map. She did not have confidence in the Board's ability to identify the land use zone lines. She said consideration should be given as to whether the ZBA could interpret the proposed text and to targeting the visible hillsides. CONNOLLY asked how the Zoning Board would address such issues and how the Conservation Commission's requirements would fit into the zoning review time constraints. Ms. Smith said this would not be a change from the existing review period. The Commission does not ask for extensions of the ZBA review period unless an applicant agrees to it.

Mrs. Lappin warned against putting this on the Warrant with the intention of fixing it next year. She expressed concern for the public perception of revising the same sections of the ordinance repeatedly.

Mr. McIlroy reported that the Conservation Commission was in support of this amendment. Personally speaking, he said the complaints about the imperfection of this amendment could be said of any part of the ordinance. He said it was the ZBA's job to interpret words about visibility. Sylvia Spitta said the amendment was merely to minimize the visual impacts.

Hilary Pridgen reminded the Board that there was longstanding community support to protect scenic views. This was also called for in the Master Plan and various other studies conducted throughout the years. She said she was worried about the potential buildout of the ridge outlined on the map without this protection over the course of a year. She urged the Board to do something now. John Joline questioned if it was conceivable that people would act on that window of opportunity. He asked how other towns addressed this matter. COLLIER said Hanover had not conducted a study on the topic. Ms. Smith said in Lyme, districts were defined by what could be seen from the public road. A map had been developed but she was not sure under what parameters.

Bob Bailey said a lot of the targeted area was already protected. He asked that consideration be given to all the landowners who would be affected and suggested a majority of them may be willing to act voluntarily to address these issues. Mr. Bailey said it would be better to have this examined from a permissive standpoint. Dave Cioffi agreed it was critical to involve the landowners. He warned against continuing to threaten landowners with more restrictive zoning. BASCHNAGEL said he was sympathetic to the landowners involved. He said there were alternatives to accomplishing these goals rather than imposing regulations. He would prefer to see a program developed whereby the Town would purchase the conservation rights of these areas. Mr. Bailey said when he was a member of the Scenic Locales Committee they discussed these issues and concluded that more restrictive zoning was not the way to go. The Committee also supported working with the landowners to try to preserve those areas.

Ms. Pridgen said this would not restrict anyone from using their land, but would limit the land's buildable area. She said she felt that zoning was the only way to achieve the goal at hand. She was skeptical that the Town could reach agreement with every landowner involved. HORNIG agreed and reiterated that this would not preclude anyone from building on their land. It would set guidelines for visual profiles and using less obtrusive building materials; it would also speak to light pollution and vegetation. It would not preclude bond options or transfers of development rights. HORNIG admitted that it would be difficult to define "environmentally responsible building on the land" but said the Planning Board considered these issues all the time as a part of Site Plan Review. Mrs. Lappin said the Zoning Board was not equipped to conduct the type of review the Planning Board was required to do.

Bob Keene said the rural atmosphere could not be maintained, as called for in the Master Plan, by ignoring these issues. He said a benefit that may result from potential complaints generated from this amendment could be that more people would get involved in preserving the rural sense of the community.

COLLIER mentioned a handout the proponents provided the Board that spoke to steep slopes and hilltop protection. She asked if it was conceivable to build a new program whereby the Planning Board could issue conditional use permits for these sensitive zones. CONNOLLY spoke in favor of incorporating this into site plan review. Mr. Edwards advocated for including other factors such as headwaters, streams, etc. into future discussions.

It was moved by HORNIG, seconded by FAULKNER, to approve this article as written and put it on the Warrant. The Board voted 3 in favor, 4 opposed. The motion WAS DEFEATED.

The Board agreed to discuss the scope and membership of a committee to study this further on April 17, 2007.

2. Approval of Minutes: Review of minutes was postponed.

3. Other Business:

Wetlands Update Committee: There was a brief discussion of the Board's intent to begin a wetlands committee and its members. A meeting was scheduled for March 21, 2007 to draft the scope of the project.

4. Adjournment: The meeting adjourned at approximately 10:00 pm.

Respectfully Submitted,
Beth Rivard, Administrative Assistant
Judith Esmay, Clerk