



Zoning Board of Adjustments

Meeting Minutes
Wednesday, October 12, 2016

UNAPPROVED

Committee Members Present: Janice Loz - Chair, Rick Davies - Vice Chair, Andrew Bodnarik, Howard Kirchner

Alternates Present: Beverley Howe, Gorey Giroux, Barb Marty

Land Use Secretary Present: Lois Lord

Excused: Gordon Nolen

1. Open Meeting

Chairwoman Loz opened the meeting at 7:00 pm.

2. Roll Call

Roll call was taken. Since full member Gordon was absent and Corey had filled in at the previous month, Janice asked Beverley fill in. Beverley accepted.

3. Approval of Prior Minutes

The minutes of August 10 were brought up for discussion or motion. Both Andrew and Barb offered some minor corrections.

Andrew made a **MOTION** to **APPROVE** the minutes as corrected. Beverley **SECONDED**. All in favor. The minutes of August 10 are approved pending minor corrections.

4. Unfinished Business

4.1 Suggested Changes to the Zoning Ordinance

Both Rick and Andy had suggestions for modifications to the Zoning Ordinance. Rick went first.

Rick wanted to address non-conforming situations and expansions of same. Email he had sent to the ZBA earlier showed the wording for the existing Zoning Ordinance, "Article IV: General Provisions", as follows:

N. If a building currently exists on the property and is closer to the abutter's property line or Public Right-of-Way than the yard requirements for that District, an addition may be added to this building as long as the new construction is no closer to that abutter's property line or that Public Right-of-Way than the present construction.

Rick had two key issues with the existing wording:

1. Article IV, N, leaves an open ended ability for an existing non-conforming building to be extended without limit along an abutter's property. For example; a non-conforming building perhaps 5' off a boundary line where 25' setback is required could be extended 100' or more in a non-conforming manner parallel to an abutter's property. There is no limit. This is particularly a problem in a residential situation and if the building gets taller.
2. The Building Department has probably unknowingly allowed non-conforming buildings to have new construction which changes the use. Residential lots are most impacted - IE, a barn changing into a house.

Rick suggested appending new language to Article IV, N, shown below in **bold** :

N. If a building currently exists on the property and is closer to the abutter's property line or Public Right-of-Way than the yard requirements for that District, an addition may be added to this building as long as the new construction is no closer to that abutter's property line or that Public Right-of-Way than the present construction. **The length of this addition within the setback may be up to fifteen lineal feet (15') if a Special Exception is granted by the Zoning Board of Adjustment. A change of use for the non-conforming building shall not be permitted unless a Special Exception is granted by the Zoning Board of Adjustment.**

Rick said the Planning Board will need to review the change before it can be submitted to the public.

Janice asked what caused him to suggest the change. Rick said he had first noticed the problem eight years ago, referencing an issue within his own neighborhood. An non-conforming barn was evolving into a residence.

Howard said he had no problem with the suggestion.

Andrew felt "Article XV: Non-conforming Use" of the Ordinance did not clearly reference the passing of time and how that relates to non-conforming situations. Rick noted that any non-conforming situations that existed prior to related Ordinances are allowed. Corey concurred saying something could have been conforming three years ago, but after a change in the Ordinance, could be non-conforming.

Andrew suggested that the advice to the Planning Board include a suggestion that there is a missing link between the Use Tables and the definition of "non-conforming use". Corey noted that the Use Tables are only helpful in terms of Special Exceptions and what's not permitted; it would be impossible to list every non-conforming use. Andrew asked what the difference was between non-conforming use and not permitted. Corey replied, "Nothing. Except a non-conforming use is something that already exists on the property by subject to being built as a conforming use and subsequently became non-conforming via variants, or something being built without permits and no one knowing about it. A non-conforming use is, by definition, is not permitted." Andrew understood but said he prefers clean language.

Rick said he felt Warner's Ordinance was okay, not perfect, while some towns go into great detail.

Janice asked if the problem Rick had raised had been a problem in the past. Rick noted that in the village, with tight lots, someone could potentially cause a problem.

Discussion continued around the exact wording of Rick's suggested change, including dimensions of any additions. Janice asked where 15' came from. Rick said he chose that as a starting point as it was the size of a room, noting the Planning Board may want a different size.

Barb asked how any of this would be enforced. Rick answered: "Building Department here, Mary, our secretary for the selectmen, works with Tom Baye (the Building Inspector) to review the plans. They ask Lois if there's something that comes up; they might inquire. There are certain situations where those questions don't get asked. It's a little bit of a gap. I've had meetings with Lois, Mary and Jim and talked data. Okay, there's a gap. We're a small town. A lot of towns have a town planner or a code enforcement officer who is the hub for these kinds of things and is very well versed in all these different situations, building permits, planning, legal situations and making sure things are

enforced. I don't think anyone does it intentionally, but there are gaps sometimes. How does it get done? As best as they can."

Barb asked how someone would know they need a Special Exception. Rick said it would be picked up during the building permit phase. Or they would have read the Ordinance themselves.

Beverley asked how one citizen appears to get away with not following the zoning Ordinance. After brief discussion, Janice returned to the topic at hand, asking if anyone had further thoughts regarding the proposed change that would be forwarded to the Planning Board.

Corey suggested that the language could be simplified even more: "Any increased non-conforming use requires a Special Exception and any change in the kind of use requires a Special Exception." He did not think picking a random number is good.

Corey also felt any changes would need to be carried over to the Use Table 1 - Residential section. Rick pointed out that his example was a lightning rod and that it would apply in all zones. Corey noted that the phrasing could be added at the bottom of each table.

Corey referenced Zoning Ordinance Article XVII, Section E, "Granting of Special Exceptions", on page 33. Paragraphs 1 & 1a read:

1. The Board shall hear and decide requests for a Special Exception and shall grant a Special Exception only when it finds that each of the following criteria has been met:

a. The use requested is identified in the Use Table of the Zoning Ordinance as a Special Exception in that respective zoning district, or as otherwise stated in the Zoning Ordinance.

Referencing that, Corey noted that according to the Ordinance, one of the criteria for granting a Special Exception is that it is shown in the Use Table. Rick added that there was an "or" clause. He wanted the language to be clear enough so that it gets used properly. Corey agreed that the Use Tables should be understandable.

Rick and Corey discussed how to reword the change without stating a specific size or implying a specific use. Janice agreed 15' sounded arbitrary. Rick noted other towns had used similar language. Corey wondered why limit the new language in terms of length. Height, width, length and use need to also be considered. Rick wanted to focus on length.

Corey clarified, noting that in Rick's example, a non-conforming barn could be extended as long as it did not get any closer to the abutter at any point. Corey said that extending something that was non-conforming, it is still non-conforming.

Rick suggested that the Planning Board have a look at his proposal.

Andy recommended no additions within the setback of non-conforming structures be allowed, rather than talking about the dimensions of the building.

Barb also felt that no changes should be made to a non-conforming building without Special Exception, avoiding conflicting guidelines in the Ordinance.

Andrew recommended adding, "within the setback". Corey felt adding restrictions would not be helpful.

Rick said he felt it would be good to go to the Planning Board with two different options for them to review. The first would be his suggestion as discussed. The second would be, "Any expansion of a non-conforming use shall be permitted only by Special Exception."

Word-smithing and discussion continued. The second option of the revised Article IV:, N finished as follows:

N. If a building currently exists on the property and is closer to the abutter's property line or Public Right-of-Way than the yard requirements for that District, an addition may be ~~added to this building~~ permitted as long as the new construction is no closer to that abutter's property line or that Public Right-of-Way than the present construction. Any expansion of a non-conforming use shall be permitted only by Special Exception.

Option 3 is to let the Planning Board come up with their own suggestion.

Rick agreed to write up the final suggestions and send them to the Land Use Office to be forwarded to the Planning Board.

4.2 Suggested Changes to the Use Tables

Andy presented suggested changes to the Use Tables. Basically, he put "N" in the blank boxes, where "N" means "not permitted". Without access to the Zoning Ordinance .doc file, Andy actually edited the pdf instead. Not an easy task!

Andy noted that if the Use Tables are changed, the associated references within the Ordinance also need to be changed. For example, on Page 9, Article V talks about how to use the Use Tables. In the text, the phrase "not permitted" will need to be added.

Rick asked Corey if the Ordinance shows things that are "not permitted", would that imply that anything not shown in the Use Tables is automatically permitted. Could that cause problems? Corey noted that one could circumscribe the value of the Use Tables in such a way as to say if the negative does not exist, that does not imply the positive.

Andy also thought a new row in the Use Tables could be added to address expansion of non-conforming use.

Rick agreed that the "N" will make the Use Tables easier to understand. However, he wonders whether another phrase could be used. Janice pointed out that when citizens ask what the blank boxes mean, the answer has always been "not permitted". But she agreed checking it would be wise to make sure there isn't legal definition of the phrase.

4.3 Suggested Changes to the Definitions

Andy went through the Use Tables to see if he could find items for which there were no definitions. The result of his work was presented to the committee members. He then pointed out some of the terms he identified.

Janice asked if everything needed to be defined. Andy noted that some terms were obvious, such as "hospital". Also, he wanted to know if the RSA's provide statutory definitions, but didn't have the time to do that research. Also, if the term may be defined in the dictionary. Rick noted that architectural standards could also be referenced.

Janice recalled that there had been instances when members of the board actually held different opinions about how terms were defined.

Andy also found inconsistencies in the Ordinance that he would like to see corrected. For example, "dwelling" and "dwelling unit" were both used in the document.

Andy pointed out there were some terms that may not be clearly defined, such as "research activity". However, what he really did not like was the use of the phrase "or other" or "miscellaneous". Example: Miscellaneous business repair services. Nebulous.

Janice wondered how "bakery, laundry, or dry cleaning plant" got clumped together in a Use Table.

Howard agreed that reading Andy's list, there were clearly terms that needed to be defined.

Before going to the Planning Board with recommendations, Andy wanted to see if the RSA's have definitions.

Andy also found that the use of the terms "accessory building" and "accessory use" felt garbled. Rick clarified that "accessory building" is a building; how it is used is what the Use Table is talking about. So, "accessory professional offices" is a use of the building. "Accessory building" is just the building; you define later on what you'll do with it. Andy said that was his issue and recommended saying "accessory building to be used as".

Barb went online and looked at the Town of Hopkinton's Zoning Ordinance. She said it includes 16 pages of definitions. Under "Child Care", there were 6 definitions provided. She said one definitions could become very finite. She noted how diagrams of setbacks were included. She suggested the committee look more closely at it and other town's approaches.

Andy doesn't like where the Use Table says things like the following entry from the "Wholesale, Transportation and Industrial" table: *"Light industrial firms such as, but not restricted to: electronics assembly, machine shop, woodworking, computer and technology, etc."* The et cetera gets him.

Rick noted that some of the terms in the Use Tables are more specific than they should be. At one point, Rick was on a sub-committee to tackle the Use Tables and they found out it was a more daunting task than they expected. Some of the terms are vague and should be. They need to be flexible over the years.

Andy said he wants consistency between the Articles and the Use Tables. Why doesn't the definition of "accessory building" in Article II include the example given in the Use Table? Howard noted that was one to highlight and that Andy was raising good questions.

Rick suggested Andy join the Planning Board to help with the task.

Beverly asked if someone asked the ZBA to review the Ordinance. The answer was no, however, the OAP does recommend reviewing the document.

Rick said the Planning Board would be reviewing some terminology at an upcoming working session, so it would be good to provide a short list of terms.

The committee went through Andy's list, discussing some terms, and selecting the following for forwarding to the Planning Board:

- ◆ One-, two-, and multi-family dwellings. (Insert the word "unit" after dwelling.)
- ◆ Town building except equipment garage. (Can Town properties be regulated?)
- ◆ Town cemetery, including any crematory therein.
- ◆ Town equipment garage.
- ◆ Town owned & operated power plant, water filter plant, sewage treatment plant and refuse facility.
- ◆ Essential services. (As defined in the RSA?)
- ◆ Eating and drinking places not including drive-in establishments. (Need consistency with Article III.)
- ◆ Drive-in eating establishment. (Need better definition for this and the one above.)
- ◆ Personal and consumer service establishment. (Confusing for some people.)
- ◆ Professional and consumer service establishment.
- ◆ Miscellaneous business repair service. (Not clear.)
- ◆ Other amusement and recreational service, outdoor; including camping groups.
- ◆ Other amusement and recreational service, indoor.
- ◆ Commercial parking lot or structure. (Such as a multi-story parking building or valet parking.)
- ◆ Bakery, laundry, or dry cleaning plant (Wholesale, transportation, industrial. Need separate rows?)
- ◆ Light industrial firms. (Use Table provides examples, but the Ordinance does not.)
- ◆ Day care or kindergarten. ("Child Day Care Home" is defined in Article III. Also, what about elderly day care? And day care not at home? Need clearer definition.)

The committee discussed the different types of kindergartens and how they fall under different Use Tables.

In general, Andy wants to see the Use Table avoid giving examples of definitions. Instead, that information should be given in the definitions section of the document.

A member of the audience suggested that the Ordinance could be modified to have defined terms presented in bold face so that readers know they included in the definitions section.

4.4 Box Stores

Towards the end of the meeting, Andy brought up topic of "Box Stores", something Corey had talked about at a previous meeting. He wondered if the current Zoning Ordinance is such that the Town is well covered. Specifically, he is not comfortable with the "Retail & Services" Use Table entry:

*2. Retail establishment selling or renting general merchandise, **including, but not limited to:** dry goods, apparel and accessories, furniture and home furnishing, home equipment, small wares, and hardware and including discount and limited price variety stores (Amended March 2015*

He believes the Use Table entry should be shorter.

In regards to "Box Store", there was some speculative discussion about WHY it is called a box store.

5. New Business

Janice shared that when she went to the the Board of Selectmen to recommend elevating Howard to a full ZBA member, one of the questions asked was about his meeting attendance. Apparently attendance is important to them. So, with that in mind, Janice proposed the following addition the the ZBA Rules of Procedure:

Attendance: All members and alternates are expected to attend every meeting of the ZBA, including site visits. Any member or alternate unable to attend a meeting or site visit shall notify the Chairman of the ZBA or the Land Use Secretary in advance and as soon as possible. The unexcused absence of a regular or alternate member from two consecutive meetings or three meetings in a 12 month period shall provide sufficient reason for a majority of the Board to vote affirmatively to request that the member resigns from the Board. In the absence of a voluntary resignation, a majority of the Board may vote to authorize the Chairman of the ZBA to request the Board of Selectmen to initiate removal proceedings pursuant to RSA 673:13.

Janice added that it means when the person's term is up, the Selectmen may look at attendance. Howard did not feel that the rules of procedure needed to be changed. Janice remembered reading somewhere that it said it was important for the ZBA members to attend all meetings. Janice also recalled difficulty of removing a member who simple failed to show up for meetings.

Discussion continued. Corey said that it is not asking a lot to call in. Rick noted there are occasions when emergencies make it impossible to call in. Janice pointed out that the ZBA will discuss the situation and then decide whether to make a recommendation to the Board of Selectmen.

Andy felt the language was kind of loose. What is "unexcused"? Audience member offered "AWOL, absent with out leave". Andy noted that someone could get sick minutes before the meeting.

Rick read the Planning Board's rule regarding attendance:

All members, including alternates, are required to attend all meetings of the Board. More than three (3) unexcused absences in a twelve-month period may be cause for review of that individual's ability to perform the duties assigned. (re: RSA 673:13)

Janice felt that missing two meetings in a row could impact a case. Andy noted that a member can recuse them self if they miss a key meeting.

Howard recommended changing "12 month period shall provide" to "12 month period **may** provide".

Rick recommended changing "are expected to attend" to "are required to attend". Janice argued in favor of keeping the sentence as written.

Next question: Where to put the new paragraph within the Rules of Procedure document? Rick recommended it go under "Officers".

Janice said she would write it up again and bring the proposed change to the next meeting.

Howard noted that the minutes of meetings need to reflect whether a member who is not at the meeting was excused or unexpectedly absent.

6. Communications and Miscellaneous

Janice noted that Lois would be out for a few weeks on excused leave. Kimberley Edelman will be filling in.

7. Next Meeting

Wednesday, November 9 at 7:00 pm.

The meeting will need to be held **UPSTAIRS** as the downstairs room will be in use.

Andy said he may be out of state that day, but will confirm.

8. Adjournment

Howard made a **MOTION** to adjourn, **Rick SECONDED**. All in favor. Janice adjourned the meeting at 9:00 pm.

Respectfully Submitted,

Kimberley Brown Edelman
Recording Secretary