

Town of Plaistow, NH
Office of the Planning Board
145 Main Street, Plaistow, NH



PLANNING BOARD MEETING MINUTES *(DRAFT MINUTES – Subject to change once approved and amended by the board at its next meeting on January 17 2024)*

January 3, 2024

Call to Order: Vice Ch. Robinson called the meeting to order at 6:31 PM.

1. ROLL CALL:

Tom Alberti, *Ch.* – Excused
Chuck Fowler – Present
Laurie Milette -Excused
Karen Robinson –Present
Richard Anthony, Alternate – Present
Timothy Moore, Alternate – Absent
Jay DeRoche, *Selectman's Alt.* – Excused
Bill Coye, *Selectman's Rep.* – Present
Victoria Healey, RPC – Present

Also Present: Daniel Kane, resident
Theresa Kane, Resident
Courtney Cronin, resident
Bob Busi, resident

V. Ch. Robinson appointed R. Anthony as a voting member for the meeting,

2. MINUTES:

The minutes of the December 20, 2023 Board meeting had been distributed prior to the meeting.

B. Coye moved, second by R. Anthony, to accept the minutes of the December 20, 2023 as presented

The motion passed 4-0-0

3. PUBLIC HEARING

V. Ch. Robinson opened the Public Hearing. She said the Board would read the Zoning Amendments, open them to discussion and then vote on whether to recommend them.

B. Coye read the proposed amendments into the record.

Proposed Plaistow Zoning Amendment Z-24-01: Are you in favor of Amendment #1, as proposed by the Plaistow Planning Board, to the Plaistow Zoning Ordinances, Article V - Establishment of Districts and District Regulations, Table 220-32K, IND2 – Industrial 2 by deleting “Aviation” as a permitted use in the district?

Proposed Article Z-24-01 Voter’s Note: The proposal is to delete aviation as a permitted use in the IND2 (Industrial 2) Zoning District.

K. Robinson moved, second by R. Anthony to post the proposed Zoning Amendment Z-24-01 to the warrant for March town meeting as recommended by the Planning Board.

The motion passed 4-0-0

Proposed Plaistow Zoning Amendment Z-24-02: Are you in favor of Amendment #2, as proposed by the Plaistow Planning Board, to the Plaistow Zoning Ordinance, Article X. Home Occupation, §220-67 Conditions, by adding the words “total, which includes cars, trucks and/or trailers” to Letter G to read?

G. Sufficient off-street parking for the employee and clients is to be provided. Any required deliveries can only be made by vehicles consistent with normal residential activities between the hours of 7:00 a.m. and 7:00 p.m. The outside parking of not more than two business vehicles ***total, which includes cars, trucks, and/or trailers***, for each dwelling unit on the lot is permitted in all residential districts provided the vehicles:

Proposed Article Z-24-02 Voter’s Note: Home Occupations are not intended to change the character of a residential neighborhood. It is not clear in the ordinance if “business vehicles” included trailers or if it was limited to just trucks and cars. This is to clarify that the restriction of two commercial vehicles is inclusive of all business-related vehicles. This is applicable to Home Occupations only. Commercial vehicles (i.e., company vehicles assigned to an employee to take home) are addressed elsewhere in the Zoning Ordinances.

K. Robinson moved, second by R. Anthony to post the proposed Zoning Amendment Z-24-02 to the warrant for March town meeting as recommended by the Planning Board.

The motion passed 4-0-0

Proposed Plaistow Zoning Amendment Z-24-03: Are you in favor of Amendment #3, as proposed by the Plaistow Planning Board, to the Plaistow Zoning Ordinance, Article XVA Solar Collection Systems, as detailed below?

Amend §220-50.1. Objective(s) and purpose., by modifying the phrase “...~~this~~ ordinance...”, to “...*the solar* ordinance...” and by adding a second sentence to the second paragraph as follows: “*In doing so the solar ordinance will help protect the general health, safety and welfare for all Plaistow residents as well as making sure the ordinance is in compliance with applicable state and federal laws.*”?

Amend §220-50.2. Definitions., by adding new definitions, modifying definitions and listing all definitions in alphabetical order as follows?

PHOTOVOLTAIC SYSTEM (also referred to as Photovoltaic Installation): An active solar energy system that converts solar energy directly into electricity.

RATED NAMEPLATE CAPACITY – Maximum rated alternating current (“AC”) output of solar collection system based on the design output of the solar system. *Sometimes measured in direct current (“DC”) at the output of the solar panels. The AC measurement is the output of an inverter(s) that convert the DC power to AC power.*

SOLAR ACCESS: The access of a solar energy system to direct sunlight.

SOLAR COLLECTION SYSTEM MOUNTS -

- A. ROOF MOUNT – No change in definition.
- B. GROUND MOUNT – No change in definition.
- C. CARPORT MOUNT – A solar collection system of any size that is installed on a carport (roof only) over a *commercial/industrial* parking area.

SOLAR COLLECTION SYSTEM SIZES -

- A. SMALL SYSTEM ~~SOLAR~~ – No change in definition.
- B. MID-SIZE SYSTEM ~~SOLAR~~ – No change in definition.
- C. LARGE SYSTEM ~~SOLAR~~ – No change in definition.
- D. VERY LARGE SYSTEM ~~SOLAR~~ – No change in definition.
- E. ***HOT WATER SOLAR SYSTEM - Sizing for these systems shall be based on solar land coverage only.***

SOLAR ENERGY: Radiant energy received from the sun that can be collected in the form of heat or light by a solar collector.

Amend §220-50.3. Table of Permitted Uses by adding the Commercial 3 (C3) zone to the Commercial 1 (C1) zone column making C1 and C3 permitted uses (for solar) identical and by deleting the word “Solar” from the system names in the Solar System Type column?

Amend §220-50.4. Roof mounts. by adding a new paragraph 3 as follows:

3). The highest point of the roof mounts may not exceed 55 feet and must have the fire chief’s approval if the highest point exceeds 47 feet.

Amend § 220-50.5. Ground Mounts. by adding a new sentence to the 2nd paragraph of as follows:
In no case shall the height of the panels exceed 20 feet.

Amend § 220-50.5. Ground Mounts. by changing the setback requirement in paragraph 4 from
“~~200~~” feet to “50” feet.

Add a new section § 220-50.11. Abandonment. as follows:

All ground mounted solar collection systems that are no longer in use shall be considered abandoned and must be removed by the property owner in 150 days or less after the abandonment occurs.

Recommended by the Planning Board: 0-0-0.

Proposed Article Z-24-03: Voter’s Notes. The revisions presented in this amendment are based on the recommendations from the Energy Committee that correct an omission, add relevant definitions, and propose height and setback distances.

C. Fowler moved, second by R. Anthony to post the proposed Zoning Amendment Z-24-03 to the warrant for March town meeting as recommended by the Planning Board.

The motion passed 4-0-0

Proposed Plaistow Zoning Amendment Z-24-04: Are you in favor of Amendment #4, as proposed by the Plaistow Planning Board, to the Plaistow Zoning Ordinance, Article IV. Natural Resources Protection; §220-19 Stormwater Management Regulations as detailed below?

Repeal and Replacement of the following sections: **§ 220-19.1. Purpose, and § 220-19.3. Minimum Thresholds for Applicability.**

Amend § 220-19.3. Minimum Thresholds for Applicability by changing the minimum threshold for applicability from 20,000 square feet to 15,000 square feet.

Deletion from the Zoning Ordinance to be moved to the Site Plan Regulations: § 220-19.4 Other Required Permits, § 220-19.5. Construction/Post Construction Regulations, and § 220 19.6 Operation and Maintenance

Deletion from the Zoning Ordinance: § 220-19-3.1 Responsibility for administration, § 220-19-3.2 Severability, § 220-19-3.3 Ultimate Responsibility, Sample Town of Plaistow Notice of Violation, and the Sample Stormwater Permit Application.

The full language of the replacement text is available on the Planning Board’s webpage and hard copies will be available at the polls.

B. Coye read the entire ordinance into the record. The ordinance is appended to these minutes

Proposed Article Z-24-04 Voter's Notes. The revisions present in this amendment are based on the recommendations from the Rockingham Planning Commission, the Southeast Watershed Alliance Model Stormwater Standards 2017, and were reviewed by engineer Steve B. Keach, Principal Engineer of Keach-Nordstrom Associates. All recommendations for changes are in order to be compliant with the New Hampshire Municipal Separate Storm Sewer Systems (MS4) requirements that were set by the United States Environmental Protection Agency.

R. Anthony moved, second by C. Fowler to post the proposed Zoning Amendment Z-24-04 to the warrant for March town meeting as recommended by the Planning Board.

The motion passed 4-0-0

Proposed Plaistow Zoning Amendment Z-24-05: Are you in favor of Amendment #5, as proposed by the Plaistow Planning Board, to the Plaistow Zoning Ordinance, Article V. Establishment of Districts and District Requirements by amending Table 220-32M - "C3- Commercial 3" Section C - Areas and Dimensions as detailed below?

Amend Table 220-32M.C(1) Areas and Dimensions by changing the minimum lot size area from "80,000 square feet" to "60,000 square feet".

Amend Table 220-32M.C(5) Areas and Dimensions by changing the maximum building size where a single business is to occupy a single building from "20,000 square feet" to "15,000 square feet".

Amend Table 220-32M.C(6) Areas and Dimensions by changing the maximum building size where multiple businesses are to occupy a single building "60,000 square feet" to "45,000 square feet".

Proposed Article Z-24-05 Voter's Note: The Plaistow Planning Board wants to reduce the minimum allowed lot size and maximum building size by 25% to ensure that develop is reflective of the purpose and intent of the Commercial 3 District which is to "limit the building size and to protect Plaistow's village center, schools, and neighborhoods from the overwhelming impacts of increased traffic and congestion".

R. Anthony moved, second by C. Fowler to post the proposed Zoning Amendment Z-24-05 to the warrant for March town meeting as recommended by the Planning Board.

The motion passed 3-1-0 (C. Fowler dissenting)

Proposed Plaistow Zoning Amendment Z-24-06: Are you in favor of Amendment #6, as proposed by the Plaistow Planning Board, to the Plaistow Zoning Ordinances, Article V -Establishment of Districts and District Regulations, Table 330-32M, C3 – Commercial 3 by deleting "Vehicular Brokerage Office" as a permitted use in the district?

Proposed Article Z-24-06 Voter's Note: The proposal is to delete vehicular brokerage office as a permitted use in the C3 (Commercial 3) Zoning District. The Plaistow Zoning Ordinances define a Vehicular Brokerage Office as: *That portion of a structure devoted in whole or in part to the*

administrative functions related to new and/or used motor vehicle sales with no retail or wholesale display or storage of motor vehicles. Retail or wholesale display and/or storage of motor vehicles are specifically prohibited. In consultation with the New Hampshire Department of Safety (NHDOS) Dealer Licensing, it was explained that they do not issue any kind of retail/wholesale dealer license that does not allow for at least one (1) display space. Since motor vehicles sales, with display parking, is already not a permitted use in the C3 district, this brokerage office use can be eliminated to avoid any conflict with NHDOS requirements.

The Board noted they had not seen this amendment at the previous meeting. V. Healey said it was presented but not worked on at that meeting and that it could be kept but would not be allowed regardless.

C. Fowler moved, second by K. Robinson to post the proposed Zoning Amendment Z-24-06 be posted to the warrant for March town meeting as recommended by the Planning Board.

The motion passed 4-0-0

Proposed Plaistow Zoning Amendment Z-24-07: Are you in favor of Amendment #7, as proposed by the Plaistow Planning Board, to the Plaistow Zoning Ordinance, to modify Article III, General Provisions, §220-2.1 Site Plan Applicability as follows?

Replace § 220-2.1 Paragraph B to read:

B. Any Commercial, Industrial, Change of Use, and Multi-family (3 or more units) Residential uses, regardless of the Zoning District they're located in, are required to include a Site Plan in the application that conforms to the Plaistow Zoning Ordinance and all Site Plan Review and Subdivision Regulations.

Proposed Article Z-24-07 Voter's Note: This amendment is to clarify what types of uses site plans are required for.

B. Coye noted a letter had been received from Plaistow resident Daniel Kane and read it into the record:

Town of Plaistow
Planning Board
145 Main Street
Plaistow, New Hampshire 03865

Re: Comments on Proposed 2024 Zoning Amendments

Dear Members of the Planning Board

I am Daniel J. Kane, a resident of 64 Main Street in Plaistow, New Hampshire and the owner of

sweet Hill Farm LLC located at 82 Newton Road, Plaistow, New Hampshire ("Sweet Hill Farm" and/or the "Farm"). ; reviewed the proposed 2024 amendments to the Town of Plaistow zoning Ordinance (the "Ordinance") and have some observations. My comments are superficially limited to the Proposed Plaistow Zoning Amendment Z-24-07:§ 220-2.1 Site Plan Applicability.

Admittedly given the history of this particular article and its use against the Farm I remain on a heightened sense of alert. I am also concerned that the amount of staff and legal time spent on what was characterized as simple housekeeping bears no relation to the minor problem it was represented to fix. From the written and video record, since its origination in 2018, on a per word basis, this may be the most expensive ordinance article the Town has ever written. In my view this perpetual tinkering with this particular ordinance article has a purpose beyond housekeeping and beyond how it was originally represented.

As you know words matter, particularly when they are uttered by public officials and more particularly when those terms are used in a zoning context. If we are using terms as they are defined within the Ordinance, the New Hampshire RSA's, the state Building Code and within standard American dictionaries then we need to understand their "clear and present meaning" as their meaning has a substantial impact on how people in our town can use their private property. In this context the accuracy and precision of language matters as the Ordinance is expressively permissive, meaning if the Ordinance is silent on any use or activity then it is not permitted. The converse is then also true. Individuals and/or boards tasked with enforcing ordinances cannot consider what the legislative body might have said nor add words it did not see fit to include. I can personally attest that to correct a misinterpretation and/or misapplication of any provision within the Ordinance takes years and costs tens of thousands of dollars to resolve. I can afford to do that but many people in this Town cannot. Who then speaks for them? If it's not you, as the Town's only duly elected land use board, then who?

I believe it is illustrative to review the history of this particular article and as initially created Article § 220-2.1 No existing site plan read:

§ 220-2.1 Site Plan Applicability

Any application for physical changes or changes of use to a lot that does not have an existing Site Plan of record, that is on file with the Town of Plaistow and the Rockingham County Registry of Deeds, must include a Site Plan in the application that conforms to the Plaistow Zoning Ordinance and all Site Plan Review and Subdivision Regulations.

The reason for the above article, as represented by the Town's Planning Director, John Cashel, at the December 12, 2018 Planning Board meeting, was simply to create "standard language found in most ordinances and it just helps to clarify that If you don't have a site plan on record and you are proposing new development on that particular site you have to come in and show us everything that is on there and everything that is proposed» period. This is a far cry from how it was used (in the only instance I am aware of) as justification to ensnare a residential use property.

If the true intent, as represented to the Planning Board by Mr. Cashel, was to make sure it captured non-residential use and multifamily use properties that had no Site Plan on file it appears to be vague enough to not work. It was not intended, if the written and video records are accurate, to address the overall requirements for Site Plan's as that requirement is clear within the Ordinance and the Site Plan Review and Subdivision Regulations. It certainly did not expand the Planning Board's statutory authority over residential use properties,

Upon amendment last year, article § 220-2.1 Site Plan Applicability was reworked to currently read:

§ 220-2.1 Site Plan Applicability

A. Any application for physical changes or changes of use to a lot that does not have an existing Site Plan, approved by the Planning Board and that is on file with the Town of Plaistow and/or the Rockingham County Registry of Deeds, must include a Site Plan in the application that conforms to the Plaistow Zoning Ordinance and all Site Plan Review and Subdivision Regulations.

B. Any application for physical changes to a lot in the Commercial, Industrial, or Multifamily Residential Districts must include a Site Plan in the application that conforms to the Plaistow zoning Ordinance and all Site Plan Review and Subdivision Regulations.

C. Any application for a change of use or any application submitted as a Planned Residential Development (PRD) or as an Affordable Housing for Older Persons District must include a Site Plan in the application that conforms to the Plaistow Zoning Ordinance and all Site Plan

Review and Subdivision Regulations.

As previously documented this amended article has multiple problems not the least of which is that it does not clearly define its scope (limited to non-residential and multifamily uses), it attempted to regulate Districts not uses and it used terms not otherwise defined within the Ordinance. There was no source document and/or public discussion as to the genesis of this amendment and what pressing issue it was designed to correct. As near as I can tell the only property it was ever applied to was Sweet Hill Farm which was further borne out when the Planning Board staff acknowledged that part of the intent of the rework was to "sort of" respond to the then recent ZBA decision regarding the Farm and partly to establish best practices to clear up a "murky and grey" article by "setting in stone the change in use, for Commercial, Industrial, Multi-Family, PRO and Affordable Housing for Older Persons" requirements for when a Site Plan was required.

At its February 1, 2023 meeting, Planning Board staff represented that the article, as then written, would require an applicant "if they were to propose any physical change or change of use for commercial, industrial or residential property [that] a site plan would be required". Given the provisions of RSA 674:43(1) and the Town's Site Plan regulations this would then make the article unenforceable against residential use properties.

We now arrive at the Proposed Plaistow Zoning Amendment Z-24-07 which retains the wording of the current article but replaces Paragraph B to read:

- A. Any application for physical changes or changes of use to a lot that does not have an existing Site Plan, approved by the Planning Board and that is on file with the Town of Plaistow and/or the Rockingham County Registry of Deeds, must include a Site Plan in the application that conforms to the Plaistow Zoning Ordinance and all Site Plan Review and Subdivision Regulations.
- B. Any Commercial, Industrial, Change of Use, and Multi-family (3 or more units) Residential uses, regardless of the Zoning District they're located in, are required to include a Site Plan in the application that conforms to the Plaistow Zoning Ordinance and all Site Plan Review and Subdivision Regulations.
- C. Any application for a change of use or any application submitted as a Planned Residential Development (PRO) or as an Affordable Housing for Older Persons District must include a Site Plan in the application that conforms to the Plaistow Zoning Ordinance and all Site Plan Review and Subdivision Regulations.

Firstly there is a typographical error as multi-family dwelling is two or more units versus three. This rework still has problems as application, physical changes, Commercial, Industrial and/or Multi Family (3 or more units) Residential uses are both unclear as to their meaning and are not defined terms within the Ordinance. Lot is a defined term but is not used in the article as one. The nearest defined term to Multi Family (3 or more units) Residential is Multiple Dwelling which is defined within the Ordinance as: Any dwelling containing more than two dwelling units. This also mirrors the definition of multi-family dwelling units contained in RSA 674:43(1).

Change of Use is defined within the Ordinance as:

CHANGE OF USE- A change of use occurs when an existing permitted use in the Commercial {CI,CII),Industrial {INDI,INDII) or Integrated Commercial Residential(ICR) districts is proposed to be changed to another permitted use. Such use shall be determined as permitted by the Zoning Officer. If the Zoning Officer determines that the proposed change of use is more intense, or significantly different, than the existing use, the proposed use shall require site plan approval by the Planning Board prior to the issuance of any permits.

When you insert that definition into the proposed paragraph B re-write, it makes paragraph B indecipherable and does not even fit within the context of the paragraph as it does not define what a change of use is, it just tells you who can make the determination. It is also only applies to certain districts, one of which is also residential. In my view given the stated desire to clarify the need for a Site Plan there appears to be no valid reason for this definition to be include in this article.

Interestingly this definition of Change Of Use was added from the 2020 Town warrant replacing an existing definition:

CHANGE OF USE- Change of use is marked by an alteration, modification, transformation, or substitution to either structural elements or the type of activity in an existing developed property. In the case of commercial and industrial properties, a new site plan must be reviewed and/or approved before a certificate of occupancy can be issued allowing such change of use to take place and signaling its compliance with all applicable Town requirements.

The specific rationale for this change, was included in the October 2, 2019 Planning Board minutes: "(Reference- No specific plan reference, clean-up)". So it appears to have been intended to work in tandem with 220-2.1 introduced the year before. From what I can see in the record this does not appear to have been a Planning Board member initiated change.

I am not here to pick apart so-called scrivener's errors but this article from its beginning has either not used terms as they are defined in the Ordinance or created terms that are not otherwise defined within the Ordinance. A fair question is Why? My personal view is that this entire article is a bazooka aimed at an ant. That being the case if the Planning Board's intent is to establish best practices to truly clarify § 220-2.1 Site Plan Applicability, restore its original stated intent, clarify when a Site Plan is required and conform to RSA 674-43(1) and the Town of Plaistow Site Plan Regulations 230-2(A)(1) then perhaps something like the following could work (changes highlighted in red):

§ 220-2.1 *Site Plan Applicability*

- A. Any application, *submitted to the Planning Board for the development, alteration, expansion and/or* change of use to *a nonresidential use Lot and/or Multiple Dwelling Lot* that does not have an existing Site Plan *and/or Subdivision Plan*, approved by the

Planning Board and that is on file with the Town of Plaistow and/or the Rockingham County Registry of Deeds, must include a Site Plan *and/or Subdivision Plan* in the application that conforms to the Plaistow Zoning Ordinance and all Site Plan Review and Subdivision Regulations. THIS IS FOR CURRENT NONRESIDENTIAL AND MULTIFAMILY USE LOTS THAT DO NOT HAVE A SITE PLAN ON FILE.

B. *Any application submitted, to the Planning Board, for the development, alteration, expansion and/or change of use involving nonresidential use and/or multifamily dwelling use (Structures containing more than 2 Dwelling Units) must include a Site Plan and/or Subdivision Plan in the application that conforms to the Plaistow Zoning Ordinance and all Site Plan Review and Subdivision Regulations.* THIS CAPTURES ALL NONRESIDENTIAL AND MULTIFAMILY USES.

C. Any application submitted, *to the Planning Board*, as a Planned Residential development (PRD, *under the provisions of the Access Management Overlay District and/ or under the provisions of the Affordable Housing for Older Persons District* must include a Site Plan *and/or Subdivision Plan* in the application that conforms to the Plaistow Zoning Ordinance and all Site Plan Review and Subdivision Regulations. THIS CAPTURES THE PRD AND THE SO-CALLED OVERLAY DISTRICTS.

Amendment Z-24-07 Voter's Guide Explanation: This amendment is to correct language in the existing ordinance and further clarify when a Site Plan is required for nonresidential and/or multifamily uses.

While I certainly have a viewpoint It is not my intent to tell people how to vote on one issue or another. I do however believe what we have here is a "tale that has grown in the telling" and that this article (along with its sister, change of use) was from the get go designed for a purpose materially different than how it was represented. From my perspective I want to protect the investment I have made and will continue to make to the private properties I own in this town and I want to have comfort that the interests of the many do not trample on the rights of the few or the one. I do not believe I am alone in this desire.

Sincerely

Daniel J. Kane

V. Healey disputed some of Mr. Kane's assertions and read RSA 674:43(1) Power to review site plan: "A municipality, having adopted a zoning ordinance as provided in RSA 674:16, and where the planning board has adopted subdivision regulations as provided in RSA 674:36, may by ordinance or resolution further authorize the planning board to require preliminary review of site plans and to review and approve or disapprove site plans for the development or change or expansion of use of tracts for nonresidential uses or for multi-family dwelling units, which are defined as any structures containing more than 2 dwelling units, whether or not such development includes a subdivision or resubdivision of the site." She noted that when the Town say multifamily 3 or more units it is the same things as stated in the RSA. She further noted the Plaistow ordinance does not need to define every term but can use what is referenced within the RSAs.

There was further discussion about discrepancies and definitions being used. She noted many parts do not exist on their own but in conjunction with other pieces, such as the referenced A., B. and C., but that only B is being changed.

Daniel Kane, 64 Main St., Plaistow stated he felt the ordinance was poorly drafted and the language murky. It was agreed it could be written with more clarity. There was a discussion of the timeline for public hearings and ordinance changes. It was noted that the current language is unenforceable, and there could be unintended consequences from the other. V. Healey noted that the current languages is by districts, one of which does not exist, and the proposed language is by uses. D. Kane said the uses is what is troubling him.

Courtney Cronin, 12 Rustic Lane, Plaistow said he was looking for clarity and that if he didn't understand what he is reading he might vote the wrong way. Theresa Kane suggested that if the language is confusing for a layman it is deceiving and misleading whatever the intent. D. Kane suggested eliminating change of use as a defined term. There was discussion of moving 'change of use' to later in the sentence.

B. Busi, 14 Rustic Lane, Plaistow said he found the ordinance confusing and that he might need a site plan to put a shed on his property. C. Fowler suggested that if you asked the Building Inspector if you needed a site plan for a shed or pool and he said no, you would understand it right away. It was generally agreed among the Board that the language could be improved.

B. Coye moved, second by C, Fowler to post the proposed Zoning Amendment Z-24-07 be posted to the warrant for March town meeting as recommended by the Planning Board.

There was discussion about changing the zoning amendment and having another public hearing on Jan. 17, 2024. It was agreed to repeal and replace the proposed amendment. After considerable discussion C. Fowler rescinded his second for the above stated motion and B, Coyle rescinded his motion.

B. Coye moved, second by R. Anthony to change the wording of the proposed Zoning Amendment Z-24-07 to the following:

The Planning Board shall require site plans to be submitted for review by any applicant seeking any of the following:

- 1. The construction of any non-residential use or multi-family dwellings.***
- 2. The conversion or enlargement of existing non-residential or multi-family uses. The Planning Board shall consider the size and proportion of any building addition when determining whether site plan review is required.***
- 3. Any change of use to a non-residential or multi-family building or site which does not have an approved site plan. The Planning Board may, at its discretion, waive this requirement if there is no***

anticipated impact on traffic, off-street parking, drainage, municipal services, or the surrounding neighborhood.

4. Approval Required. Prior to land clearing, excavation, site preparation, construction or any other such activity may begin on a site, and before any permit for such activities may be issued, final approval of the Site Plan is required as evidenced by the recording of the approved plan(s) at the Rockingham County Registry of Deeds. All activity on the site shall be performed in accordance with the approval.

The motion passed 4-0-0

B. Coye moved, second by R. Anthony to continue the Public Hearing to January 17, 2024

The motion passed 4-0-0

Citizen's petition: D. Kane read the following into the record:

CITIZEN'S PETITION TO AMEND ZONING ORDINANCE PLAISTOW TOWN WARRANT
We, the undersigned registered voters of the Town of Plaistow, request the Board of Selectmen to insert the following article on the Warrant for the March 12, 2024, Town Meeting of Plaistow, New Hampshire. Shall the Town vote to approve the following addition to the Plaistow Zoning Ordinance as Article VIIB, Agritourism Overlay District as follows?

Article VIIB
AGRITOURISM OVERLAY DISTRICT (AOD)

220-55.3-Authority. This Article is based on the provisions and authority of the following New Hampshire Revised Statutes Annotated {RSA):

RSA 21:34-a Farm, Agriculture, Farming.
RSA 184:84(V) Milk and Milk Products; License Required
RSA 236:74 (II) © Regulation of Erection and Maintenance of Certain Advertising Devices
RSA 425:4(1X) Duties of the Commissioner.
RSA 425:2-a The Granite State Farm to Plate Food Policy and Principles
RSA 432:33 Right To Farm, Immunity From Suit
RSA 672:1 Declaration of Purpose (III)(b) and (d)
RSA 674:17 Purposes of Zoning Ordinances
RSA 674:21 Innovative Land Use Controls
RSA 674:26 Agriculture Under Interim Zoning Ordinance
RSA 674:32-a Presumption
RSA 674:32-b Existing Agricultural Uses and Activities
RSA 674:32-c Other General Provisions
RSA 674:32-d Agritourism Permitted

220-55.4-Objectives and Characteristics. The purpose of the Agritourism Overlay District {AOD) is:

1. To preserve working lands and support Agricultural Operations (as herein defined), activities and practices of Farms within the Town of Plaistow as a viable economic activity and discourage conversion of farmland to other incompatible uses.
2. To provide clear municipal authority for agricultural land-owners to launch Agritourism activities in specific areas of the Town of Plaistow as a way to supplement their income, educate visitors about their way of life, and share their agricultural heritage with others.
3. To protect and promote agriculture as an important component of the Town of Plaistow economy.
4. To implement the goals and objectives of the Town of Plaistow Master Plan, which recognizes the economic, environmental, and cultural benefits of our agricultural and working lands.
5. To empower farmers and other rural land owners to start new, entrepreneurial endeavors that augment, and highlight the importance of local agriculture.
6. To attract visitors to the more rural areas of the Town of Plaistow to see and experience the value of local agricultural lands to our culture, economy, landscape and local food supply.
7. To boost agricultural commerce in the Town of Plaistow by establishing a broad overlay district that reduces barriers and inconsistencies among the existing Districts, while maintaining and promoting the high quality of the environment and the economy in rural sections of the Town of Plaistow.
8. This chapter places no new restrictions or limitations on legal, existing or permitted uses within the underlying Districts in the AOD. The intent of this section is only to add new permitted uses and to ease some land use restrictions which pose regulatory barriers to a healthy and sustainable agricultural economy. Additionally, this section is meant to promote and build on the inherent strengths of Town of Plaistow with a particular focus on preserving the rural charm now attached to the town . The provisions of this Article applies only to those Districts where Agriculture is expressly permitted under the Town of Plaistow Zoning Ordinance.

220-55.5 Definitions

Capitalized terms shall have the meaning defined herein, within the Town of Plaistow Zoning Ordinance and/or the New Hampshire RSA's:

Accessory Farm Structure. Any Structure, less than three stories above plane grade in height and other than a Building Principal, located on an Active Farm is considered to be an Accessory Farm Structure. All Accessory Farm Structures are deemed to be Agricultural Structures and not Commercial Structures.

Active Farm. A Farm with annual sales from on farm produced Agricultural Products greater than \$100,000. The owner of the Active Farm shall certify, no less frequently than annually, to the Town of Plaistow Planning Board its compliance with this definition.

Agricultural Home Stay Establishment. A Dwelling or existing Structure on an Active Farm where the owners and/or managers of the Farm are physically residing on the same property for providing lodging and meals to visitors/guests for compensation.

Agricultural Operation. Agricultural Operation when used in this Article includes any farm, agricultural or farming operation and/or activity including any practice or activity on the farm incident to, ancillary to, or in conjunction with such farming operations and/or activities, as defined in RSA 21:34-a.

Agricultural Product. Any agricultural, horticultural or floricultural commodity or product derived from crops grown, on a Farm, under cultivated conditions or from livestock and poultry raised for human or livestock consumption. Also included within this definition is the production of maple syrup, honey, milk and milk products (defined as fluid milk, cultured fluid milk, cream, yogurt, raw milk yogurt, frozen yogurt, sour cream, eggnog, butter, ice cream, gelato and cheese aged at least sixty days).

AOD Use or Structure. Any Use or Structure used in an Agricultural Operation that furthers the pursuit of Agritourism, which means attracting visitors to a Farm to attend events or activities that are accessory uses to the Farm's operation, including, but not limited to, being provided a meal, making overnight stays, enjoyment of the Farm environment, education which shall be instruction or learning about the Farm's operations, or active involvement in the activities of the Farm. Notwithstanding any provision within this Article, the maximum Footprint of all AOD Structures shall occupy no more than 5% of the total land area of an Active Farm.

Beer Festival. As defined in RSA 178:30

Cider Mill. A cider mill or cidery, is the location and equipment used to crush apples into apple juice for use in making apple cider, hard cider, applejack, apple wine, pectin and other products derived from apples.

Craft Distillery. A Liquor Manufacturer, licensed pursuant to RSA 178:6, producing no more than 5,000 9 Liter cases of distilled spirits annually.

Farm. A Farm shall be as defined by RSA 21:34-a.

Farm Stand. A Farm Roadside stand, subject to the requirements of RSA 21:34-a (III), contained within a temporary or permanent structure located on a Farm and used to display and sell Agricultural Products and other products.

Full Service Restaurant. As defined in RSA 175:1(XXXIII)

Micro-Brewery. A Brewery, as defined in RSA 175:1, licensed as a Brew pub, pursuant to RSA 178:13 or Nano Brewery, licensed pursuant to RSA 178:12-a, manufacturing Beer, Mead, Specialty Beer, Cider and/or Specialty Cider not exceeding 2,500 barrels annually.

Small Scale Craft Beverage Producer. A Beverage Manufacturer, licensed pursuant to RSA 178:12 or a Rectifier, licensed pursuant to RSA 178:7 producing no more than 20,000 9 Liter cases of Beverages annually.

Small Scale Winery. A Wine Manufacturer, licensed pursuant to RSA 178:8, producing no more than 20,000 9 Liter cases of Wine domestic, Wine-fortified and/or Wine-table annually.

Wine and Liquor Festival. As defined in RSA 178:31

220-55.6-Conflicts with other regulations.

If a specific AOD standard or regulation conflicts with other specific standards in the Town of Plaistow Zoning Ordinance, the AOD rules and standards shall apply. Additionally, if any section, subsection, sentence, clause, phrase or other portion of this Article or its application to any person is, for any reason declared invalid, illegal or unconstitutional in whole or in part by any court or agency of competent jurisdiction, said decision shall not affect the validity of the remaining portions hereof.

220-55.7 – General Standards

General standards for all AOD Uses and Structures within the AOD shall be as follows:

1. All AOD Uses and Structures, within the AOD are deemed to be agricultural and not commercial.
2. AOD Uses and Structures shall incorporate a rural theme in terms of building style and design. This means that AOD Uses involving new AOD Structures shall complement or enhance, rather than detract from the rural environment.
3. New AOD Structures shall be located, designed and operated so as not to interfere with the agricultural operations, activities and practices on an Active Farm. New AOD Structures are limited to lands not in Current Use as that term is defined within RSA 79-A, lands with poor agricultural soils (as identified in the New Hampshire Soil Data Directory) or lands otherwise not suitable for agricultural purposes. No new AOD Structures are permitted if they would have a demonstrated adverse effect on public health or safety, or on the value of adjacent property.
4. Subject to the provisions of RSA 674:32-c (II) dimensional standards, setbacks, driveway and traffic regulations, parking requirements, noise, odor, or vibration restrictions, are the same as established within the underlying District for all AOD Uses and Structures.
5. AOD Uses and Structures shall comply with all federal state and local laws, regulations, and rules, including agricultural best management practices guidelines adopted by the Commissioner of the Department of Agriculture, Markets, and Food.
6. Safe vehicular access and customer parking shall be provided on site, such that vehicles are not required to back onto public roads. AOD Structures and parking shall be located outside of public rights-of-way. All parking and loading standards will comply with the Town of Plaistow Site Plan Regulations.
7. Any exterior lighting installed related to an AOD Use or Structure shall be appropriately shielded and directed generally downwards to minimize traffic safety impacts and light pollution. All lighting will comply with the Town of Plaistow Site Plan Regulations.
8. Parcel Size Standards. Unless otherwise specified, the minimum parcel size for AOD Uses within the AOD is ten acres and not less than 250 feet of Frontage if adjacent to a right of way. Exceptions to the ten-acre minimum parcel size, and/or the 250 foot Frontage requirement may be considered through a variance process in accordance with the Town of Plaistow Zoning Ordinance.
9. Maximum Structure Size. The maximum square footage for any new Structure related to an AOD Use is twenty thousand square feet, except as otherwise stated by this Article. Existing buildings may be used for AOD Uses regardless of size.
10. The following signs are permitted on an Active Farm within the AOD:
 - Two on site twenty four square foot freestanding signs are permitted so long as both signs are located on a state highway; otherwise one on site thirty square foot freestanding sign is permitted. The freestanding sign(s) and supporting structure(s) may not exceed ten (10) feet in height. Each Accessory Farm Structure shall also be allowed up to two signs attached to a building facade, provided that the following restrictions are met:
 - 1) If both signs are attached to the same Accessory Farm Structure facade, then the total square footage of both signs shall not exceed 10% of the building facade to which they are affixed.

2) If the signs are attached to different Accessory Farm Structure facades, then one sign shall not exceed 10% of the facade to which it is affixed, and the other sign shall not exceed 5% of the facade to which it is affixed.

3) The Accessory Farm Structure facade is calculated by measuring from roofline to foundation and subtracting out any glass.

All freestanding and attached signs within the AOD shall consist of wood construction only, shall be illuminated with indirect lighting and shall be in keeping with the agricultural character of the Active Farm.

11. AOD Uses and Structures, not otherwise permitted within the underlying zoning district and/or not expressly defined within this Article are not permitted in the AOD. However nothing in this Article will otherwise restrict, limit in any way and/or prohibit existing permitted agricultural uses and/or structures.

12. Nothing in this Article shall apply to any aspect of an AOD Operation, activity and/or practice determined to be injurious to public health or safety under RSA 147. Nothing in this Article shall be deemed to modify or limit the duties and authority of the department of environmental services under RSA 485 or RSA 485-A or the Commissioner of the Department of Agriculture, Markets, and Food under title XL.

220-55.8-Exempt AOD Uses and Structures.

Exempt AOD Uses and Structures are those uses and structures permitted as a matter of right under this Article, (i.e. no Site Plan is required). However, other local, state or federal regulations such as building, life safety, fire and health, may have requirements that need to be met or approvals/permits that need to be obtained.

- i. The following standards shall apply to all Exempt AOD Uses and Structures permitted by this Article:
 - a. Exempt AOD Uses and Structures, involving on- site transactions with the public, shall meet applicable vehicular access and parking regulations as identified within the Town of Plaistow Site Plan Review Regulations.
 - b. The Town of Plaistow Planning Board, or their designee, shall determine if an unlisted use is exempt, permitted or prohibited based on similarity to a listed use and the likely impacts of such unlisted use.
 - c. Exempt AOD Uses and Structures in this section are not subject to the Parcel Size Standards.
- ii. Exempt AOD Uses and Structures include, but are not limited to the following:
 - a. Manned and unmanned you-pick operations, including, but not limited to vegetable and berry picking, pumpkin patches and similar uses.
 - b. Christmas tree and Christmas greens sales.
 - c. Hay rides/sleigh rides.
 - d. Farm Stands that meet the requirements established within RSA 21:34-a (III). Expressly permitted within a Farm Stand are licenses necessary to operate a Retail Food Store and a Food Service Establishment licensed for no greater than 50 seats (indoor and outdoor combined) and/or no more than two Food Prep Areas. All Farm Stand's possessing a Retail Food License and/or a Food Service license shall comply with all applicable state and local building, life safety, fire and health codes.
 - e. Homestead Food Operations, either exempt pursuant to RSA 143: A (5) or licensed pursuant to RSA 143: A (12). Homestead Food Operations exclude the sale of potentially hazardous food as defined in RSA 143:A-12{1}(b). All Homestead Food Operations shall comply with all applicable state and local building, life safety, fire and health codes.
 - f. Direct sale to consumers of Agricultural Products

- g. Farm tours and agricultural clinics, educational seminars or classes learning about the farm environment, organized group activities involving nature watching or star gazing with no overnight accommodations.
- h. Agricultural activities, operations and/or practices specifically exempted from the Town of Plaistow Site Plan Review Regulations by state law and the Town of Plaistow Zoning Ordinance.
- i. Farmers Markets operating pursuant to RSA 21:34-a (V).
- j. Agriculturally related experiences occurring on an Active Farm where no Structure is involved, i.e. corn/crop mazes, hay bale sculptures and similar crop art installations, animal feeding, petting *zoos*, archery ranges, fee fishing and similar low intensity activities in conformance with all standards contained in this Article and all other applicable sections of the Town of Plaistow Zoning Ordinance.
- k. Activities and uses defined as nature tourism, gee-tourism, culinary tourism, art tourism or eco-tourism are permitted by right within the AOD on an Active Farm. In addition, such uses shall be designed and operated so as to enhance the economic viability of farming and maintain the rural character of the AOD by:
 - i. Promoting locally grown and produced Agricultural Products, goods and services;
 - ii. Emphasizing local rural and agricultural attributes such as local specialty crops, farming and rural culture, native and natural resources, local history, local food networks and relationships, and other elements which highlight the importance of local agriculture; and
 - iii. Attracting visitors who will see and experience the value of local agricultural lands to the culture and economy of the Town of Plaistow who may purchase locally grown and produced Agricultural Products, goods and services.
- l. Agricultural Home Stay Establishments, for the purpose of providing temporary accommodations to visitors and tourists shall only be located on an Active Farm. All applicable local, state and federal law, permits and licenses shall be met/obtained prior to establishing an Agricultural Home Stay Establishment, including required State of New Hampshire and Town of Plaistow licenses. Agricultural Home Stay Establishments shall be subject to the following limitations:
 - 1. Maximum length of stay is ten days per visit.
 - 2. Maximum number of guests is sixteen overnight guests per day.
 - 3. Guest units shall only be contained within an existing Accessory Farm Structure or Dwelling, located within the Existing, Not in Current Use area of an Active Farm to reduce the impact to agricultural lands. For purposes of this section the Existing Not In Current Use area of a Farm is that portion not in current use as of the date this Article is adopted by the Local Legislative Body.

220-55.9-Permitted AOD Uses and Structures

The following AOD Uses and Structures are permitted within the AOD on an Active Farm subject to the Town of Plaistow Site Plan Review Regulations and Site Plan approval by the Town of Plaistow Planning Board:

- 1. Small Scale Wineries, Microbreweries, Cider Mills, Craft Distilleries, and similar Small Scale, Craft Beverage Producers with an associated Full Service Restaurant, tasting room and/or retail space, located on an Active Farm
- 2. Structures and mechanical appurtenances necessary for the production and storage of locally produced wine, beer, cider, distilled spirits and other craft beverages shall be exempt from maximum height limits pursuant to the Town of Plaistow Zoning Ordinance governing Building Height for chimneys, spires, *towers*, silos, tanks and similar projections.
- 3. Small Scale Wineries, Microbreweries, Cider Mills, Craft Distilleries and other Small *Scale*, Craft Beverage Producers within the AOD on an Active Farm may also include the following accessory uses:
 - i. Product tasting facilities.
 - ii. Retail sales of wine, beer, cider spirits and other craft beverages produced on-site.

- iii. Full Service Restaurant
 - iv. Tours, seminars, parties, weddings and all other temporary uses allowed under Section 4 of this Article titled "Short-term events" are permitted at Small Scale Wineries, Microbreweries, Cider Mills, Craft Distilleries and other Small Scale Craft Beverage Production facilities within the AOD on an Active Farm.
4. Short-term events such as Beer Festivals, Food, Wine and Liquor Festivals, art shows, weddings, corporate gatherings and similar temporary gatherings, within the AOD on an Active Farm are permitted in accordance with the following:
- a. Short-term events up to thirty days per year involving no more than one hundred and fifty individuals daily are allowed as a matter of right.
 - b. Short-term events exceeding thirty days per year and/or involving more than one hundred and fifty individuals daily may be permitted with the approval of the Planning Board.
 - c. On-site parking shall be provided in accordance with the Town of Plaistow Site Plan Review Regulations.
 - d. All local public health, noise, food handling, building and other applicable regulations shall be followed.
 - e. For Short term events lasting two or more days and with an expected daily attendance exceeding one hundred and fifty individuals, the on-site manager or owner of the Active Farm shall notify all abutters in writing of the date, time, duration and description of the event. Notification shall occur at least five business days prior to the beginning of the event.
 - f. Short-term events not meeting the criteria contained in this section are not permitted within the AOD.

It was agreed that the petition is in keeping with the Town's Master Plan. It was agreed Agritourism could be good for the Town. Some concerns were when exceptions are in conflict with Town standards. Some of the issues noted include wetland regulations, stormwater and aquifer inconsistencies, and structure height. V. Healey noted some incorrect definitions.

R. Anthony moved, second by K. Robinson that the Proposed Citizen's Petition CP-21-01 be posted to the Warrant for March Town Meeting as recommended by the Planning Board

The motion failed 2-2-0 (K. Robinson and R. Anthony in favor, B. Coye and C. Fowler opposed)

K. Robinson closed the public hearing at 10:00 PM

ADJOURNMENT

There was no additional business before the Board and the meeting was adjourned at 10:02 PM.

Respectfully Submitted,

Charlene A. Glorieux
Minute Taker