



**Town of Plaistow, NH
Office of the Planning Board
145 Main Street, Plaistow, NH 03865**

**PLANNING BOARD MINUTES
September 4, 2019**

Call to Order: The meeting was called to order at 6:30pm.

ROLL CALL: Tim Moore, *Chair*
Lisa Lambert, *Vice Chair*
Laurie Milette, *excused*
James Peck, *arrived at 7:25pm*
Francine Hart, *Selectman's Rep*
Geoffrey Adams, *Alternate*

Also present was: John Cashell, *Planning Director*

T. Moore appointed G. Adams as a voting member in L. Milette's absence.

Agenda Item 2a: Review/Approval of the Minutes of the July 17, 2019 Planning Board Meeting:

T. Moore offered that the review and approval of the Minutes of the July 17, 2019 meeting will be postponed until the next meeting.

Agenda Item 2b: Review/Approval of the Minutes of the August 21, 2019 Planning Board Meeting:

T. Moore offered that the review and approval of the Minutes of the August 21, 2019 meeting will be postponed until the next meeting.

Agenda Item 3: Workshop Items:

Review of Zoning Ordinance Amendments:

The Board was provided with "Suggestions for 2019-2020 Zoning Amendments" handout.

T. Moore offered a review of each of the Suggestions for 2019-2020 Zoning Amendments.

1. §220-9.1 – Location of residential driveways (page 14):

Currently reads:

§ 220-9.1. Location of residential driveways. [Added 3-8-2005 ATM by Art. P-2; amended 3-11-2008 ATM by Art. P-08-22]

All driveways in any residential district must be located within the frontage of the lot and comply with the rear and side setbacks as specified in Table 220-32I.

Suggested Amendment:

§ 220-9.1. Location of residential driveways. [Added 3-8-2005 ATM by Art. P-2; amended 3-11-2008 ATM by Art. P-08-22]

- A. All driveways in any residential district must comply with the rear and side setbacks as specified in Table 220-32I.**
- B. Driveways for new lots, created by the subdivision of an existing parcel, must be located within the minimum frontage qualifying the lot for subdivision.**

Or Alternately....

- B. Lots created by subdivision, with frontage on more than one Class 5 road, may choose either frontage for the location of the driveway, provided that at least one of the frontages meets the minimum requirements of the district, and the new driveway meets all required setbacks from the side and rear property line as specified in Table 220-32I.***

(Reference – 3-lot subdivision, 108 Sweet Hill Rd)

Discussion:

T. Moore offered a review of the current definition, proposed change, and reference as stated.

L. Lambert offered that just because an applicant applies for a variance, it does not mean that the Board needs to change an ordinance. She asked if the Board is looking to change the ordinance just based upon one (1) project.

There was a discussion about the rationale for changing the Zoning ordinance. It was discussed that by making the change it would specify the zoning a bit more for residential projects in the future.

J. Cashell offered that the current side and rear set back requirements work for larger lots. However, the projects that have smaller lots struggle a bit more with the current set back requirements. He suggested that the Board review this in a bit more detail to come up with a set of customized driveway regulations that are specific to Plaistow. It might make sense to review driveway regulations from other towns to compare strengths and weaknesses, as some restrictions may not make sense for Plaistow.

T. Moore asked if the Board should look at both commercial and residential.

There was a discussion that in most circumstances, commercial projects require more than one driveway. Also, for some projects shared driveways make sense to avoid having to make curb cuts.

★ **T. Moore offered that the discussion regarding ordinance for the location of residential driveways will be tabled until the Board can review it in more detail.**

2. Business Use Definition and Where to Allow (definitions on page 4, and Article V, district requirements, various districts, starts on page 24):

It was suggested that there be a definition for “Tradesmen” to define the category for electricians, plumbers, HVAC techs and the like. Once the definition is finalized it then needs to be decided what districts these businesses will be allowed in and they need to be added to the permitted uses tables in those districts.

Currently there is no specific mention of these types of businesses even though we have them throughout the town and they are frequently confused with Contractor’s YARDS, which is something totally different in our definitions. Until now, tradesmen have been shoe-horned in as a “retail” use, because of how our current definition of retail is written:

- B. RETAIL BUSINESS — A business enterprise where goods and/or services are sold directly to the ultimate consumer.***

which is confusing as most people think retail as strictly “product sales.” There isn’t a specific permitted place for these types of businesses, it’s pretty fuzzy.

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The suggestion would be to add a new “Business” use definition in Article II...

G. TRADESMEN - A business enterprise which holds the necessary state and local licenses to provide trade services directly to the ultimate consumer. Such examples would be electricians, plumbers, HVAC contractors, and the like. This does not include businesses that would require outdoor storage or stockpiling of materials such as landscaping or building/construction contractors.

Recommendation is that Tradesmen be allowed as a permitted use in the I1, I2, C1, C2 and ICR (Commercial/Industrial and Combined tables) districts.

Note: Tradesmen are specifically called out as permitted uses as a home occupation (Article X §220-66.C, see page 68) for the office function only. Those with home occupations are allowed two (2) commercial vehicles, not greater than a 1-ton capacity (per Article III, §220-13). There are no specifically defined places for them to relocate to when they outgrow the restrictions of a home occupation.

(Reference – 33 Newton Road – Change of use from motorcycle sales and service to powder coating and finishing in front building with no more than four (4) contractors/tradesmen in the back building)

Discussion:

T. Moore offered a review of the current definition, proposed change, and reference as stated.

T. Moore offers that this amendment is to give a better definition of “tradesmen” and clarify the permitted use districts.

T. Moore asked if the Board had any questions.

L. Lambert asked if perhaps “skilled labor” might be a better synonym than “tradesmen”.

There was a discussion regarding the specific definition of a tradesman. There was a brief discussion to review the reference of the 33 Newton Rd. project. It was discussed that there needs to be a better definition of a Contractor’s Yard.

G. Adams offered that “general contractors” do not need to have a license in New Hampshire.

There was a discussion that there needs to be a review for projects requesting outside storage for Site Plan approval. It was discussed that projects that have outside storage will need a more in depth review of landscaping and screening.

T. Moore offered that it may be beneficial to have a list of specific businesses and see how this definition falls into place.

★ **T. Moore offered that the discussion regarding the ordinance for business use definitions and where to allow them will be tabled until the Board can review it in more detail.**

3. Permitted Uses Tables – Commercial II (page 31) and Village Center District (page 33):

The definitions in Article II breaks down businesses into specific types (pages 3-4). One such definition is for “Personal Services Business” and is defined as:

D. PERSONAL SERVICE BUSINESS — A business enterprise which holds the necessary state and local permits to operate an establishment in which state-qualified practitioners provide individuals with such manual or mechanical types of treatment to external surfaces of the human body as

barbering, cosmetology, esthetics, electrology, body massage and physical therapy. [Amended 2-10-2001 ATM by Art. P-29]

These types of businesses are not listed as a permitted use in the VC or CII districts, only in the CI and ICR districts. However, doctors and dentists, uses that are similar to some of those defined as Personal Service Business, are permitted in the VC, CII as well as the CI and ICR as they are defined as “Professional Office” business uses. There are already hair salons and barbershops in the VC district as grandfathered uses.

Note: All the uses in both Personal Service Business and Professional Office Business definitions would be allowed as a home occupation in any residential dwelling, no matter what district they are located in. Both CII and VC allow for residential uses, so personal services would be a permitted home occupation in both these districts.

Proposed Change:

To add Personal Service Business as a permitted use in the CII (Table 220-32C) and VC (Article V, Table 220-32D) districts.

(Reference - This change has been proposed based on discussion with business owners interested in locating a personal service business in these districts and with property owners who are trying to sell their properties in these districts.)

Discussion:

T. Moore offered a review of the current definition, proposed change, and reference as stated.

There was a discussion that the owner of the building does not have to reside in the building and that a “home occupation” is specified differently.

There was a discussion that tattooing is not prohibited in the State. However, there are specific restrictions regarding tattoo parlors in Plaistow.

F. Hart offered that the Board of Selectmen (BOS) has been reviewing regulations and tattooing is broken into its own category.

There was a discussion on whether hotel and motel should be removed altogether. There was a brief discussion regarding the term “extended stay”. It was discussed that if there is a decision to add in “extended stay” then it would require its own definition and regulations.

There was a discussion regarding permitted uses within the Village Center. It was discussed that there is a goal to preserve the charm and character of the Village Center.

G. Adams offered that in some ways allowing home businesses might benefit the Village Center. There might be ways of deterring people from using Main St. as a cut through from Route 125.

J. Cashell offered that the Board would need to be careful about what properties are used for business, as business use could increase property values.

L. Lambert expressed concerns about allowing properties to be used for business and its possible impact on Safe Routes to School.

T. Moore offered that there may need to be restrictions specific to the Village Center. It may be practical to review all of the permitted uses for the Village Center.

F. Hart offered that if there are restrictions specific to the Village Center, they would need to be listed out.

L. Lambert offered that the Board should also review permitted uses on the outskirts of the Village Center and also take a look at any grandfathered businesses.

There was a brief discussion regarding affordable apartments and workforce housing with regard to compliance come 2020. It was discussed that the Town has committed to doing a compliance review every five (5) years. However, it is not officially mandated.

★ **T. Moore offered that the discussion regarding the ordinance for permitted use for Commercial II and Village Center District will be tabled until the Board can review it in more detail.**

4. Article II – Definition of Change of Use (page 4):

Currently reads:

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.

Suggested Amendment:

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

(Reference - No specific plan reference, clean-up)

Discussion:

T. Moore offered a review of the current definition, proposed change, and reference as stated.

T. Moore offered that the goal is to provide a more concise definition of “Change of Use”.

It was discussed that this is another topic that needs to be reviewed by the Board in more detail to specifically detail what changes will require a new Site Plan review to be completed by the Board.

J. Cashell offered that any change of use that will increase the intensity of use would require a new review by the Planning Board.

J. Peck arrived at 7:25pm.

★ **T. Moore offered that the discussion regarding the ordinance for Article II - Definition of Change of Use will be tabled until the Board can review it in more detail.**

5. Home Occupations – Daycare vs. Teaching (page 68):

Ordinance currently reads...

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§ 220-66. Permitted uses.

Business uses clearly secondary to the home may be permitted, by special exception from the Zoning Board of Adjustment, to allow a place to work within their legal residence for persons in one of the following professions, occupations or trades:

- A. *Attorney, architect, consultant, personal service business, engineer, real estate agent, insurance agent, internet sales or similar recognized profession. [Amended 3-13-18 ATM by Art. Z-18-01]*
- B. *Artist, craftsman, daycare (caring for not more than six children not living in the home, seamstress), one-chair beauty parlor, teaching not more than four pupils simultaneously in addition to those living in the home, and other similar occupations. [Amended 3-9-2010 ATM by Art. P-10-P]*

Proposed Change:

(Reference - Suggestion from the ZBA that this be made consistent, either the daycare and teaching are both limited to four (4) children/pupils or both six (6) children/pupils, not living in the home. They do not have a preference either way, but are suggesting that the same number be used for both home occupations as they are similar in function.)

Discussion:

T. Moore offered a review of the current definition, proposed change, and reference as stated.

There was a discussion regarding changing the number of children and the number of pupils to keep it consistent. It was discussed that the Board could make the decision on whether the number should be four (4) or six (6).

The Board agreed that the number of children and the number of pupils should be consistent.

★ T. Moore offered that the discussion regarding Home Occupations - Daycare vs. Teaching will be tabled until the Board can decide upon a consistent number that they feel is appropriate.

6. Affordable Elderly Housing Ordinance (starts on page 54):

§220-53.A(6) currently reads:

(6) The minimum lot size shall be 160,000 square feet. At least 50% open space must be provided and no more than 30% of this open space can be in a wetlands district or have slopes greater than 15%.

§220-54 currently reads:

§ 220-54. *Density.*

All plans submitted under this ordinance must show calculations for the maximum number of bedrooms permitted on the site by NHDES septic loading criteria. This is to be used as a theoretical maximum number of bedrooms. Other criteria may significantly lower the number of bedrooms permitted.

- (1) A maximum of six (6) Age-Restricted Affordable Elderly Housing Units (Renter Occupied) may be constructed per 40,000 square feet. Note that soil and slope requirements may increase the 40,000 square feet to a larger area.*

Suggested Amendment:

§220-53.A(6)

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(6) The minimum lot size shall be 160,000 square feet. At least 50% open space must be provided and no more than 30% of this open space can be in a wetlands district or have slopes greater than 15%. ***The 50% open space may not be used towards the density calculations.***

§220-54

- (1) A maximum of six (6) Age-Restricted Affordable Elderly Housing Units (Renter Occupied) may be constructed per 40,000 square feet ***of the buildable space as defined by §220-53.A(6) of this article.*** Note that soil and slope requirements may increase the 40,000 square feet to a larger area.

(Reference - Some developers have come in with questions regarding how the buildable space is defined. These two changes will help clear that confusion.)

Discussion:

T. Moore offered a review of the current definition, proposed change, and reference as stated.

★ **There was a consensus to change the Affordable Elderly Housing Ordinance as stated in the suggested amendment.**

Article VI Planned Residential Development (PRD) Ordinance (starts on page 51):

Suggestions that have been made for changes to the PRD Ordinance:

- Eliminate the requirement for a minimum of 10 Acres. Developers would benefit from being able to arrange structures around slopes and wetland areas. The Town will benefit from preservation of more open space as a PRD requires a 50% open space buffer.
- Eliminate the requirement for 200 feet of frontage on a Class 5 road. Any new PRD will include a new road. All new lots will front on that new road. As long as there are adequate sight distances and enough frontage to be able to construction the new road (50 feet) then the 200 feet of frontage is not necessary.
- PRD open space buffer language needs to be review. The intent of the open space buffer is to preserve open space. While a PRD is required to have at least 50% open space, the current language does not provide for that open space to be a buffer around the development. The current language only provides for a “no structure” buffer within 50/100 (MDR/LDR) perimeter. This means that, depending on how the lots are planned out a property owner could have 50/100 feet of their property that they cannot put even a small structure like a shed or a pool in that buffer. The property line could be the same as the perimeter of the PRD, which would require any property owner to obtain a variance to use that space within the “no structure” buffer. The lots in a PRD are already allowed to be smaller than a traditional lot (because of the shared open space) so to cut off 50/100 feet of the property is restrictive. The Board may want to consider language that would require the shared open space buffer to be what surrounds the PRD and perhaps make the buffer minimum 50 feet for both MDR/LDR districts.

(Reference - No particular site reference, just ordinance review and in-house discussion.)

Discussion:

T. Moore reviewed the suggested changes for the PRD Ordinance.

L. Lambert asked if the suggested changes were an attempt at being proactive regarding Town water.

T. Moore offered that the requirement to have two hundred (200) feet of frontage may be too much.

L. Lambert offered that there are some places like Tuxbury Meadow that don't have two hundred (200) feet of frontage.

J. Cashell offered a brief discussion on the rationale behind having two hundred (200) feet of frontage for Open Space Developments. The goal is to save as many trees and as much vegetation as possible.

J. Peck asked what specifically "Open Space" meant.

J. Cashell offered an explanation of Open Space.

T. Moore offered a brief discussion regarding some violations that have been encountered in the past regarding the clear cutting of trees on a property and then the owner coming back to the Board to propose developing the property.

F. Hart offered discussion on a North Ave. property where cutting was done with what turned out to be the incorrect permit. She stated that the Board needs to make sure that the applicant is doing what they say they are going to do and not ask for forgiveness after-the-fact.

There was a brief discussion on whether or not the Board can go back and request that a property owner reintroduce some trees on a property. It was discussed that the Board should be able to push back upon the property owner to preserve the visual aesthetics of nature. There needs to be a creative approach between the Board and the developer to be sensitive to the environment.

J. Peck offered that the Town needs to have a well written definition of "open space".

J. Peck asked for an example of "planned development".

J. Cashell offered Village Way as an example and stated that the current PRD Ordinance shows the best effort at preserving open space.

★ **T. Moore offered that the discussion regarding the ordinance for Article VI - Planned Residential Development (PRD) will be tabled until the Board can review it in more detail.**

Zoning Board of Adjustment Approval – 2-Year Deadline to Exercise:

In 2013 legislation was passed that put an expiration date on all variances and special exceptions that were NOT exercised. If the variance/special exception is not implemented within two (2) years of approval it is voided. The property owner would have the option, prior to the expiration date to request an extension. That request would go back to the ZBA.

This legislation only covers variances/special exceptions since it was enacted in 2013. Any non-exercised variance prior to the does not have the 2-year expiration date, unless a Town proposes an ordinance change that would impose the 2-year expiration on those prior to 2013.

The Board may wish to discuss whether or not there is they want to propose such an ordinance.

As noted in the email that was sent about variances/special exceptions we do not have a specific count as to how many previously granted, but not exercised, variances/special exceptions there are and there is not a reasonable way to obtain that count. It would probably be more common that a commercial variance was not exercised than a residential one, because most homeowners do not go through the trouble and expense of obtaining a variance without a specific project pending. My guess is if there are any at all, they are few in number and would identify themselves if they came in to do whatever project the variance/special exception was needed for.

Discussion:

T. Moore offered a brief review of the current ZBA approval process. He stated that this review is to decide if the Board wants to propose an ordinance change that would apply the two (2) year expiration date to all projects that were approved prior to 2013, where ultimately the properties were not developed. He stated that he can't think of any projects that this currently applies to.

J. Peck asked why the Board would want a variance to have an expiration date.

T. Moore explained that the expiration date is needed in case a Zoning Ordinance has changed since the variance was granted.

F. Hart asked what amount of time a requested extension would be good for and how many extensions could be given.

T. Moore offered that it would be up to the ZBA to decide the amount of time given for an extension as well as the number of extensions that can be given.

L. Lambert asked if there is currently a log of variances that have been granted by the ZBA over time.

J. Cashell offered that there is not a "log" per se. However, there are files, Minutes, documents, videos, etc. for reference.

F. Hart offered that it makes sense to adopt this change to allow for variances granted for projects prior to 2013, that were not ultimately developed, to become null and void.

F. Hart and J. Peck offered that they are both in favor of adopting the expiration date for variances granted prior to 2013.

J. Cashell offered a brief discussion regarding vesting requirements for projects.

★ **T. Moore offered that the discussion regarding the ordinance for ZBA Approval - 2 Year Deadline to Exercised will be tabled until the Board can review it in more detail.**

J. Cashell offered that it is best to have all public hearings for any zoning ordinance changes that they want to go before the voters completed before Christmas.

J. Cashell asked if it would be more efficient to assign sections of the suggested zoning amendments to individual members of the Board for review so that they can be reviewed with the Board at the next workshop meeting.

- J. Cashell - **§ 220-9.1. Location of residential driveways (Page 14)**
- J. Cashell - **Article II – Definition of Change of Use (page 4)**
- L. Lambert - **Home Occupations – Daycare vs. Teaching (page 68)**
- T. Moore - **Article VI Planned Residential Development (PRD) Ordinance (starts on page 51)**
- Unassigned - **Business Use Definition and Where to Allow (definitions on page 4, and Article V, district requirements, various districts, starts on page 24)**
- Unassigned - **Permitted Uses Tables – Commercial II (page 31) and Village Center District (page 33)**
- Unassigned - **Zoning Board of Adjustment Approval – 2-Year Deadline to Exercise**

F. Hart offered that the 2020 census will be a valuable tool in helping the Board make more informed decisions.

T. Moore offered that the census is reviewed every three (3) years and that the information is taken into consideration when scheduling updates for the Town's Master Plan.

There was a discussion that the Public Hearing to introduce the amendments to the Zoning Ordinances should take place during the first Planning Board Meeting in December 2019.

Discussion of DTC letter RE: Telecommunications in R-O-Ws:

J. Cashell offered a brief review of the letter provided by DTC Lawyers RE: Comprehensive Public Rights-of-Way Ordinance, dated August 23, 2019. He stated that he has spoken with Mark Pearson, Town Manager regarding the letter and there are four (4) towns that are to regulate within the statutory regulations and that the letter proposes a group representation.

Agenda Item 4: Old Business:

There was no old business presented.

Agenda Item 5: New Business:

There was no new business presented.

Agenda Item 6: Communications, Updates, & Other Business:

There were no additional communications, updates, or other business presented.

There was no additional business before the Board and the meeting was adjourned at 8:35p.m.

Respectfully Submitted,
Samantha D. Cote
Recording Secretary