

**LINCOLN PLANNING BOARD
REGULAR MEETING MINUTES
WEDNESDAY, MARCH 9, 2016 – 6:00PM
LINCOLN TOWN HALL - 148 MAIN STREET, LINCOLN NH**

APPROVED

Present: Chairman Jim Spanos, OJ Robinson - Selectmen's Representative, John Hettinger, Paula Strickon, Ron Beard (alternate & Fire Chief), Callum Grant (alternate), Norman Belanger (alternate)

Members Excused: Vice-Chairman R. Patrick Romprey

Members Absent: None

Staff Present: Town Manager and Town Planner Alfred "Butch" Burbank, Planning and Zoning Administrator Carole Bont, and Wendy Tanner (recorder)

Guests:

- **Michael Snyder** – 23 Cedar Point Road, Durham, NH 03824-3306, Owner of One Love Brewery, LLC.
- **Dennis M. Ducharme** – Managing Member of RiverWalk at Loon Mountain, LLC, at 33 Brookline Road, Lincoln, NH 03251, and RRP (Registered Resort Professional), President of Inn Seasons Resorts 212 Mid Tech Drive, West Yarmouth, MA 02673, including Inn Seasons at South Mountain and Inn Seasons at Pollard Brook.
- **Roy Whitaker** – Owner of Lincoln Sign Company. P.O. Box 395, Lincoln NH 03251 and resident of Lincoln.
- **David Dixon** – 4 Liberty Lane, PO Box 1331, Lincoln, NH 03251-1331, owner of 4 & 6 Liberty Road, (Tax Map 107, Lot 069)

- I. **CALL TO ORDER** by the Chairman of Planning Board (PB); announcement of excused absences, if any, and seating of alternates(s), if necessary.

Meeting was called to order 6:00 PM.

Ron Beard is seated.

II. CONSIDERATION of meeting minutes from:

- February 10, 2016

The minutes from February 10, 2016 will be reviewed at the next meeting.

- February 24, 2016

Motion to approve the minutes of February 24, 2016 with one wording change on page 5 paragraph 3.

Motion: Paula Strickon Second: Norm Belanger All in Favor: (5-0)

III. CONTINUING AND OTHER BUSINESS (Staff and Planning Board Member/Alternates).

A. **6:00 PM – Request for Planning Board to approve an Application for Site Plan Review approval for expansion of use from a restaurant to a combination restaurant/small brewery.** Applicant Michael Snyder d/b/a One Love Brewery of 25 South Mountain Drive, PO Box 304, Lincoln, NH 03251-0304 is currently operating a restaurant in the former Fratello's Restaurant in the Village Shops building at 25 South Mountain Drive #16 (Map 118, Lot 046) owned by Village Shops ICH, LLC of PO Box 127, Lincoln, NH 03251. The property is located in the Village Center (VC) District.

One Love Brewery currently does the following:

1. Serves food and alcohol in the restaurant and on the deck.
2. Has entertainment outdoors on the deck (like a three (3) piece band).

The Applicant wants to include the manufacture of beer and selling beer to their customers.

Town Manager Burbank gave a brief summary of where things are right now at the One Love Brewery. When Michael Snyder came in originally for a conceptual of the One Love Brewery, the Planning Board indicated that before Mr. Snyder actually began building the brewery phase of the project that he come back in and talk to the Board to answer further questions. There was a meeting with the company that runs the Lincoln waste water treatment plant and Mr. Snyder to discuss waste water coming from the brewery. At that meeting there were no issues with the waste quantities that would be coming from the brewery.

Mr. Snyder said they had a candid meeting and discussed protocol of other breweries. At the meeting with the waste water treatment people, Mr. Snyder provided two brochures explaining best practices of small breweries and how towns deal with their effluent. The state has inspected but cannot give their seal of approval until the federal government approval is complete. At the time of the first conceptual they did not have a clear focus on where their water needs were going to go. Mr. Snyder showed a map with outlines of the sinks, main water and drainage. All waste will drain into town sewer.

Hettinger asked what the largest size vessel that could be distributed into the waste water system would be. In other words, if there was a bad batch that had to be dumped, how many gallons would that be. Mr. Snyder said 400 gallons is the largest tank. Mr. Snyder added that in 20 years of professional brewery experience he had only had to do that once. Mr. Snyder explained that depending upon the brewery, it takes approximately 5 to 8 gallons of water to make one gallon of beer. It is a small brew house that is not kegging, bottling or canning any beer, and these all require mass amounts of water that is not available today.

Chair Spanos asked if there were any bottling or canning plans for the future. Mr. Snyder said that although there were no plans, he did not want to rule that out totally.

Hettinger thought that it would be a good idea to keep a close relationship with the sewage treatment facility. Mr. Snyder agreed and said that they want to be a good neighbor and partner and dumping beer of that volume down a drain would be rude and he would not do that.

Robinson asked if there would be a settling tank and what would be going into the sewer system. Mr. Snyder said that the effluent would go directly into the drain and that there are hardly any solids. The biggest problem that municipalities will face is spent grain going down the sewage. Spent grain is already expanded and swelled and could clog small systems. Mr. Snyder explained that their spent grain will be shoveled into lidded trash bins. It is about keeping your environment clean, Mr. Snyder felt.

Belanger asked the size of the PVC pipe for the floor drain. The Planning Board members thought it would be four inch (4") pipe. Mr. Snyder said it would be a four (4") inch pipe.

Chair Spanos asked what you would do with spent grain. Mr. Snyder said that the spent grain is traditionally given to farmers as a feed supplement. There is not a problem getting rid of it because it is high in fiber and protein. To a brewer it is waste, so you almost always give it away free.

Town Manager Burbank asked if the tanks were in.

Mr. Snyder said that the "brew house" has two vessels. The two tanks arrived prematurely and sit in a spot where they work around them. The other tanks will come in the end of May. They are currently working on electrical and lights because they are not exactly sure, feet wise, exactly where the plumbing will come together. Brewing is expected to begin in July.

Motion to accept the application as complete as presented.

Motion: OJ Robinson Second: John Hettinger All in Favor: (5,0)

Motion to open public discussion.

Motion: OJ Robinson Second: John Hettinger All in Favor: (5,0)

Hettinger asked if odors that come out of the stack will be near any rooms in the Inn Seasons Resort. Mr. Snyder said that the stack is on the side of his building and comes out above the roof line. Mr. Snyder also said that it will smell like a bakery. Mr. Snyder said it was akin to if you were driving on the highway you would smell a bakery.

Beard asked if it was different from brewing a domestic beer. Mr. Snyder said it would have a similar smell to a sugar shack, "a sweet smell, an aroma of sweetness in the air".

Motion to close public discussion.

Motion: Ron Beard Second: John Hettinger All in Favor: (5,0)

Motion to approve the application as presented.

Motion: OJ Robinson Second: Ron Beard

Hettinger asked that if it is necessary to add a condition that if the odors are not acceptable to the neighbors, the problem will be fixed. Mr. Snyder said that the smell is akin to a bakery and that he did not think that would cause a problem with the neighbors.

Chair Spanos asked if there was a way to filter the exhaust to get rid of the odor. Mr. Snyder said no, but they could move the stack higher on the building.

Bont asked if Mr. Snyder planned to use the spent grain to make bread. Mr. Snyder said that he has done that in the past and that many breweries do make bread from the spent grain, but that he has no current plans to do so but it is an option for the future. In any case, the amount of spent grain used to make bread is relatively small – just to flavor the bread.

Strickon stated that most breweries send their spent grain to dairy farms. Mr. Snyder said that some of their spent grain is sent to poultry farms as well.

Chair Spanos asked Mr. Snyder that if the town received complaints would he be willing to come back in and discuss options with the Planning Board. Mr. Snyder agreed that he would.

All in favor: (5,0)

IV. NEW BUSINESS

- B. 6:00 PM – Planning Board Consultation** re: three types of proposed signs not addressed in the Land Use Plan Ordinance (LUPO) – (1) Halo Backlit Sign with Reverse Lit Channel Letters, (2) Lighted awning sign; (3) Bracket sign off the side of a Main Free Standing Sign for multiple businesses in one location

Bont showed the Planning Board examples of each type of sign that was not in the Sign Ordinance.

Halo Backlit Sign with Reverse Lit Channel Letters (“Halo Sign”)

Sign maker Roy Whitaker gave the presentation for three proposed signs.

Whitaker explained how a halo backlit sign is put together. The halo lit signs will be used for the “RiverWalk at Loon Mountain” (“RiverWalk”) sign at the entrance on Main Street. Technically it is a face lit sign. Mr. Whitaker showed several examples to the Planning Board. The black on the sign will be slate stone and will have a spotlight shining on it as well as the back lit letters. The sign itself is freestanding.

Bont assured the Planning Board that the sign will be located on property owned by RiverWalk at Loon Mountain, LLC, and that the sign will not be an off premise sign.

Town Manager/Planner Burbank asked if a sign for RiverWalk would be on the building as well. Mr. Ducharme said that there would be a sign on the building over the carport that would be a wall sign, not back lit letters.

Bont said that in reviewing the current sign ordinance, the Halo sign almost fits the description of an externally illuminated sign because it will have a light shining up from the ground, but it almost fits the definition of an internally lit sign because it will have backlit letters that appear to be internally lit. Bont explained to the Planning Board that Mr. Whitaker is here because this proposed halo sign does not directly fit within any of the defined categories of the ordinance. The staff and Mr. Whitaker are looking for the Planning Board's guidance and direction.

Robinson asked for confirmation from Bont that she was looking for direction for this type of sign and not this particular sign. Bont agreed. Bont said that Mr. Whitaker is intending to apply for a sign permit for the halo signs for RiverWalk, but has not done so yet.

Robinson said that in his opinion, halo signs are a step up from internally lit signs and where the sign is located did not matter. Such a sign located anywhere was an improvement over a standard sign.

Town Manager/Planner Burbank said that the Planning Department is requesting direction because it is not specifically addressed in the ordinance and others may come in for this same type of sign.

Bont said that as soon as other business in town see the sign and see how great it looks, everyone will want one. Robinson said he wants one. Mr. Ducharme said he has a patent on it (laughter ensued).

Hettinger asked how they replace the lightbulbs. Mr. Whitaker said that LED lights have a 30-60 year life expectancy and "they love the cold", therefore the LED lights last a very long time.

Strickon asked if Ducharme if there were going to be signs on the building. Mr. Ducharme said there would be a sign on the carport of the building.

Chair Spanos asked the members of the Planning Board if they had any issues with classifying this sign as a free standing sign and whether the sign should meet the criteria of a free standing sign.

Robinson said that if Mr. Ducharme changed his mind and decides to put the same type of sign on the RiverWalk building, whether it was a wall sign or a free standing sign, either one if externally lit, is a better option to the average externally lit sign. Robinson said he does not have a problem approving the halo sign as an externally lit sign. Robinson felt that it was a classy way to light the sign.

Chair Spanos asked if Robinson meant that in his opinion the halo light was "internally lit" or "externally lit". Robinson said distinguishing whether the halo sign was an "internally lit" or "externally lit" sign was a fine line. The halo sign looks internally lit, technically the light is in the channel letters, but the light itself is not enclosed. Is the light inside or outside the sign? Bont said she is just looking to the Planning Board for guidance.

Hettinger asked Whitaker about the color of the lighting in the halo sign. Should the halo sign be a specific color for the light? Or can the halo light change colors? Robinson said that the halo

sign should go along with the sign ordinance regulations for non-blinking sign. The halo sign cannot be blinking or flashing or simulate movement.

Bont said she thought that the halo sign comes closest to meeting the definition of an externally illuminated sign description in the ordinance.

Chair Spanos read the ordinance for “internally illuminated signs”.

The maximum size of an internally illuminated sign, or the internally illuminated portion of a Wall or Free Standing Sign may not exceed twenty-four (24) square feet.

Mr. Whitaker said that in the sign business “an internally illuminated sign” is a cabinet with strings of halogen bulbs inside the cabinet that light the entire face.

Bont said that the standards for “externally illuminated signs” does not mention any size limitations, but the standards for a “free standing sign” does have size limits.

The size of the sign and the number of businesses on the sign were discussed. If the freestanding sign represents multiple businesses on one freestanding sign, the maximum size allowed is one hundred fifty (150) square feet in size including the structure.

Robinson said that if the Planning Board accepts this type of sign as an “externally illuminated sign”. If it does, then no matter what type of structure the sign is – freestanding or wall sign – the sign then needs to meet the requirements of that type of sign.

Town Manager/Planner Burbank said that the halo sign easily meets the description and standards for a freestanding externally illuminated sign, so now the staff will be able to apply the rules consistently for anyone who comes in for a sign permit.

Bont agreed and was happy with that description.

Lighted Awning Sign

Mr. Whitaker said that Mr. Snyder asked him to put a sign on the awning on the front of the One Love Brewery. The only sign the building currently has is the wall sign on the side of the building. The question is, is the lighted awning within the specification of the ordinance?

Hettinger asked where the lights are on the awning. Mr. Snyder said the lights were underneath [the plastic sheathing shaped like an awning].

Bont and Chair Spanos looked through the ordinance trying to find a classification.

Mr. Snyder said after they took over the space for One Love Brewery, they “had to resurrect the awning because it didn’t work”. Because the lights in the awning did not work, any outdoor seating they had outside would have to be shut down early in the evening because there was no light. Now

that the awning works, they can keep outdoor seating until later in the evening. Mr. Snyder said that the awning also helps draw people to the business.

Chair Spanos asked if there was any lettering on the awning now. The answer was, no, there is no lettering. Mr. Whitaker said that if approved, there would be plain white lettering over the lighted awning.

Robinson said that although the LUPO has standards or guidelines for awnings signs, those standards do not include lighting. Bont said that the awning on the building is not a typical fabric style awning; the awning is more of an architectural feature of the building.

There was a brief discussion about awnings, sizes and lighting. Mr. Whitaker said that he was only looking for guidance. Many Board members thought the proposed sign on the awning would enhance the building.

Robinson said that the ordinance reads that awnings with messages printed on them are a type of wall sign. So if the sign should meet the criteria of a wall sign.

Bracket Signs Added Onto Freestanding Sign for Multiple Businesses

Sign maker Roy Whitaker explained that the business Peaked Moon located in the Village Shops “would like to come clean and make everything within regulations”.

There was a brief discussion about the signs that Peaked Moon has had in the past and their various locations on the property.

Mr. Whitaker said that Peaked Moon Farm would like a sign over their door and a sign hanging off of the side of the RiverWalk sign.

Bon said the two freestanding signs for the Village Shops associated with both the Peaked Moon and Riverwalk were tricky. It looks like the Village Shops has two freestanding signs, however, if you look carefully at the property boundaries, the RiverWalk sign is located on the RiverWalk property which includes the stem with South Mountain Road coming out to NH Route 112/Main Street where South Mountain Road intersects with Main Street. The other freestanding sign is located on land owned by The Village Shops ICH located in the parking lot.

Mr. Whitaker said that the lower portion of the RiverWalk sign will be for the Village Shops (i.e., making it partially an off-premise sign). On that freestanding sign located on RiverWalk property there is the Pediatric Dentistry, Loon Rustics, Texas Toast and the Barbershop.

Robinson asked if the maximum size requirements for a freestanding sign for multiple businesses was one hundred fifty (150) square feet. Bont read the ordinance for freestanding signs in the Village Center for multi-business properties.

Multiple business properties are permitted one Free Standing Sign with only thirty-two (32) square feet allowed per business, not to exceed one hundred fifty (150) square feet, including the structure.

A discussion ensued around the size of the current sign and whether another sign could be added to the existing freestanding sign for the Peaked Moon Farm without going over the one hundred fifty (150) square foot maximum.

Robinson said the current sign is a freestanding sign. Robinson felt that if the idea was to add a bracket on the sides of the current sign, as long as the entire size of the sign does not exceed the one hundred fifty (150) square foot maximum, he believes the sign (including the brackets) would meet the criteria. When an applicant comes in and applies for a bracket sign and even if the bracket sign looks atrocious – whether the sign looks good or bad is irrelevant – the whole freestanding sign, including the bracket signs, needs to add up to no more than one hundred fifty (150) square feet.

Strickon said that this proposed sign is for a “simple entity shopping area.” Strickon asked, “Shouldn’t the owner of the shopping area make a new sign that goes up further so that all the stores on the premises can have [their] signs on the one freestanding sign rather than have [little bracket] bits hanging off of it”? Strickon thought it would seem more logical to have everybody on the same sign “rather than having bits hanging off”.

Mr. Whitaker said that they are redesigning the current sign “on a different location”. Hettinger thought that a redesigned single freestanding sign would make it less confusing for potential customers who are driving down the road, looking for a particular business location.

Mr. Whitaker said the other sign is only going to read “Village Shops” with a rustic background and raised white letters.

Strickon does not like the idea of signs with brackets hanging off the edge of freestanding signs. Hettinger agreed that it would be much cleaner and the freestanding sign would look more attractive if it did not have other signs hanging off the sides.

Bont said that the proposed bracket sign is a better solution to what has been done by Peaked Moon Farms for signage in the past.

Chair Spanos said that the Planning Board needs to make a decision as to whether or not a side bracket sign hanging off a freestanding sign is allowable under the ordinance.

Mr. Whitaker asked if he should submit a permit application and “the Planning Board can do their regular thing based on what is submitted”. Bont explained that the Planning Board would not get a chance to review it. What will happen is she will review the permit application and if the proposed sign does not fit any of the criteria in the ordinance, an application for a Special Exception to allow the proposed sign would go to the Zoning Board of Adjustment (ZBA) for its review.

Robinson said that if the proposed sign meets the square footage requirements, the bracket signs should fit as a part of the freestanding sign. Robinson believes that if the freestanding sign together

with attached bracket signs falls within the one hundred fifty (150) square feet, it will fit the criteria for a freestanding sign.

Robinson said that a freestanding sign can have one hundred fifty (150) square feet per the regulations. If Paula Strickon does not like it, that is a whole different discussion. Robinson wondered if the sign permit application could be brought before the Planning Board as a design issue, not as a square footage issue.

Hettinger said that the proposed bracket sign would be attached to the support structure for the freestanding sign, but then the freestanding sign would have “junk” hanging outside the support structure. The question for fellow Planning Board members is, do you want to live with that type of sign throughout Town? Or do you want a neat sign with everything inside the support structure?

Robinson said that the current Peaked Moon A-frame sign does not meet the requirements of the sign ordinance.

Town Manager/Planner Burbank said that it does not and by rights the Town does have the right to ask the Peaked Moon to take the sign down, however, we have not enforced that authority.

Bont read the general provisions on page 66 re: the limitations on the number of signs allowed.

a. Number of Signs

- i. The maximum number of signs used for advertising a business is limited to four (4) for any one business at any one location, except where the “linear road frontage rule” applies to Free Standing signs; see Art. VI-B,I,I0,j Free Standing Sign.
- ii. In determining the maximum number of signs, the count is based on Free Standing, Wall, Projecting, Awning, Archway, Portable, Wall Graphics, Wall Lettering and Roof signs.
- iii. All Wall Signs that meet the allowed aggregate square footage count as one (1) sign. Excluded from the sign count are Directional Signs, Informational Signs, Banners and Flags.

Robinson asked if every business in the Village Shops can have four (4) signs. Bont said, “Yes”, according to the ordinance. Town Manager/Planner Burbank said that potentially there is sign pollution just following the terms of the ordinance.

Beard said that if he had to choose between the existing sandwich board sign for Peaked Moon or having a nice esthetic bracket sign addition to the existing freestanding sign, he would chose the bracket sign addition to the freestanding sign.

Bont questioned how the Planning Board wanted to measure the bracket sign on the side of the freestanding sign. When Bont reviewed the Alpine Adventures sign she gave them credit for the negative space on the top of the sign. When Alpine Adventures’ sign went before the ZBA, the ZBA did not give credit for the negative space on the sign; the sign was measured using an rectangular outline of the sign fully and included the empty space on top. Bont questioned if a

sign was hanging off either side of another sign structure, would it be measured to the ground or only the space of the sign itself.

Robinson said that the square footage of the sign would be only where the sign was, and just because the sign was sticking out, you would not measure from the outer edge of the bracket sign down to the ground; only the size of the sign sticking out would be measured.

Chair Spanos said that was the way the ZBA interpreted the dead space for Alpine Adventures.

Robinson tried to distinguish the two signs. Robinson said that the proposed bracket sign hanging off from a freestanding sign is a rectangular sign. The Alpine Adventure sign that the ZBA had to interpret was an odd shaped sign with a portion sticking off the top with daylight in between. Bont said for the Alpine Adventure sign she did not give credit for the daylight, she only gave credit for the portion of the top of the sign that was missing or was the negative space.

Grant said that “Where this is at a junction and vehicles are pulling up to it, the sign was probably sighted to be out of the line of sight, the street side of it. Anything you add to that is compromising the visibility on the street side of the sign. If it is not compromising visibility, there is no problem. You could potentially add on both sides to balance it up.”

Town Manager/Planner Burbank said that the biggest complaint with the Peaked Moon’s A-frame sign is that people have to inch out into traffic to see around it. Fire Chief Ron Beard (who also works for NH DOT, plowing, etc.) said that if a drive has a plow on the front of the vehicle, the plow has to be over the white line in order for the driver of the plow truck to peer around the A-frame sign to check oncoming traffic on NH Route 112/Main Street.

Chair Spanos polled the Board and everyone agreed it was all right to hang a sign from another sign structure, although Paula Strickon agreed reluctantly.

C. 6:00 PM – Planning Board Consultation – David Dixon – Walk-In – Conceptual & Consultation – 4 & 6 Liberty Road, (Tax Map 107, Lot 069)

David Dixon had questions he wished to run by the Planning Board. David Dixon owns a single family home and a rental mobile home with additions at 4 & 6 Liberty Lane.. His address is PO Box 1331, Lincoln, NH 03251-1331. He owns 4 & 6 Liberty Road, (Tax Map 107, Lot 069)

David Dixon said that his surveyors, Sabourn & Tower, are in the process of submitting a Wetlands Report to NH DES for the proposed replacement of an old mobile home with additions located on his property with a small log cabin. The log cabin would have a smaller footprint than the mobile home with additions. His property presently includes a single family residence and the mobile home which has been a rental property. Dixon listed the problems that complicates his situation:

- There is a positioning issue because the old US Route 3 is now his driveway. (US Route 3 was rerouted.) He wants to line the log cabin up with his house along US Route 3, further away from the Pemigewasset River, but closer to US Route 3.
- There is a water main there and he is required to keep ten feet (10’) away from that water main.

- There is also a culvert that no one (i.e., neither the State nor the Town) wants to claim that is not included in the deed of his property.
- There is a corner of the proposed log cabin that may infringe upon the thirty (30) feet of setback between buildings that is currently required by the ordinance. Currently the mobile home is less than 4 feet from the house.

Mr. Dixon believes that moving the mobile home back twenty-eight feet (28') from the Pemigewasset River would be an improvement and would also be removing a visual eyesore from US Route 3. Pending approval from FEMA with wetlands, Mr. Dixon would like to bring it to the attention of the Planning Board because of the setback and footprint of the building.

Town Manager/Planner Burbank wanted to be sure that everyone knew where this property was. Mr. Dixon's property is directly across US Route 3 from Joe Chenard's property.

Mr. Dixon said it started out as a log cabin and was separated from the property many years ago.

Town Manager/Planner Burbank explained that Mr. Dixon would like to replace the mobile home on his property. When Dixon puts the log cabin in place of the mobile home, he will not be putting the log cabin back exactly where the mobile home was. Because the mobile home is on the Pemigewasset River, there are wetland issues and flood plain issues. Dixon is proposing to move the mobile home back away from the river.

Hettinger asked if Dixon's building was within one hundred fifty feet (150') of the river. Dixon said that he thought that the setback was fifty feet (50'). Mr. Dixon stated that a neighbor (Paul Peterson from the Liberty Motel) just replaced a cabin and Dixon thought that cabin was only fifty feet (50') from the river. Bont and Mr. Dixon discussed where that cabin was and the differences in elevation between Dixon's lot and that part of the neighbor's lot.

Mr. Dixon said he is not going to put in a cellar; he is proposing to put in only a four foot (4') crawl space under the log cabin. The log cabin would be constructed by the same company that did the cabin at Mount Liberty (Coventry Log Homes). The log cabin would be used for rental income purposes.

Chair Spanos asked if the proposed log cabin would meet the Town's setback requirements. Mr. Dixon said that he thinks it will. Dixon said "they checked with the "FEMA folks and there is some grey area as long as you stay within the same footprint of what you are replacing". Where Mr. Dixon is looking to be ten feet (10') back from the road, he believes the log cabin might squeeze into that mobile home footprint by seven feet (7'), maybe.

Chair Spanos asked if the log cabin would be on its own lot or if there would be more than one structure on the same lot. Mr. Dixon said "no", the log cabin would be placed on part of his lot; both houses would be all on one lot. Robinson said that there is currently a house and a mobile home on the lot. Mr. Dixon is planning to remove the mobile home and replace it with a new log cabin. The log cabin would not be on the exact same footprint as the mobile home, but it might be several feet into the current footprint of the mobile home.

Robinson asked Dixon, “Right now the mobile home is out of the setback of your southern neighbor’s house?” Mr. Dixon said, “yes”, that the trailer is more than fifteen feet (15’) from the Gilman property line. Mr. Dixon explained that if the State or Town were to replace the culvert, the culvert currently diverts ground water from US Route 3 across the front of his property and then out to the Pemigewasset River. The culvert/ditch with diverted water is the current boundary line between his property and Gilman’s property.

Town Manager/Planner Burbank asked if the new log cabin would be closer than fifteen feet (15’) to that property line. You cannot be closer than fifteen feet (15’) from your neighbor’s property line in the General Use (GU) Zone. Mr. Dixon said that the survey crew was aware of that and they are making sure that the proposed log cabin is not within the setback.

Town Manager/Planner Burbank said that Dixon is taking an older mobile home and putting in a nice log cabin so it will look much better. Dixon is running the concept by the Planning Board to be sure that there is no problems with the change.

Bont said that it has been quite a while since she looked at the Dixon lot. She did not remember everything about the lot now, however, one of the things she did remember was that a fair portion of the Dixon lot was within the FEMA 100 Year Flood Elevation Level (“floodplain”). When she discussed the floodplain with Dixon, Dixon said he thought the elevations as indicated in the most recent FEMA Flood Insurance Rate Maps (FIRM) might not be accurate in that location. Bont said the less than accurate FEMA FIRM maps was one of the reasons she recommended that Dixon have a surveyor survey the elevations because perhaps a surveyor would discover that Dixon’s property is more out of the 100 Year Flood Plain than our more recent maps indicate.

Town Manager/Planner Burbank said that the front of Dixon’s property is almost level with US Route 3. Burbank thought that if Dixon’s property was up to that level, that “would drop him out of the floodplain”.

Mr. Dixon said that the survey team showed that where the mobile home currently is located, a good deal of the mobile home is within that fifty feet (50’). “We are pulling all that back towards where the driveway or old US Route 3 is. Considering Dixon’s log cabin has to be ten feet (10’) feet back from the water line as well, with a small farmer’s porch on the front, the log cabin should fit. Mr. Dixon added that the size of the proposed log cabin would be well shy of the square footage of the existing structure.

Chair Spanos asked if the new structure would be one story. Mr. Dixon said that there is a second story loft with an eave and a dormer. Although the original plans for construction of the log cabin had a ladder to get to the loft, this one will have a small staircase to get to the loft using the dormer for headroom. The cabin will not be a full two story.

Chair Spanos said that three (3) units makes the Dixon property a commercial property. Dixon said that he thought his property was already zoned “commercial”.

Robinson said that Dixon does not meet the density requirement, but he is reducing the current density so that will make it better. The space between the buildings now “is ridiculous” and Dixon is putting the two buildings further apart, so that is better as well.

Grant said that Dixon is putting the proposed log cabin further away from the Pemigewasset River as well so that is three positives.

Chair Spanos said that he did not believe Dixon would need a Site Plan Review, just a Land Use Permit. Hettinger said that as long as he received a Land Use Permit from the Planning Department. Chair Spanos told Mr. Dixon that he will need to submit an application to Carole Bont to get a Land Use Permit and he will be all set.

Motion to postpone review of the minutes of February 10, 2016 until next meeting.

Motion: OJ Robinson

Second: John Hettinger

All in Favor: (5,0)

- A. **6:00 PM – Planning Board Consultation** re: how to apply Setback Requirements to driveways that need manufactured retaining walls greater than four feet (4') in height (i.e., “structures”) within the setback to support access to the lots up on South Peak Resort and in other areas in town with steep lots.

This discussion applies to the steep lots in the South Peak Resort and other steep lots in other developments as well.

Town Manager/Planner Burbank explained to the Planning Board the problem with the current setback restrictions when applied to steep lots. Burbank said that he and Chair Spanos recently met with a contractor to look at a series of driveways up at South Peak. The contractor wanted to show them that due to the steepness of the lots, in order to get a driveway in, the property owners and their building contractors would need install manufactured walls – not rock walls – to support the driveways. The manufactured walls would need to extend into the fifteen foot (15') setback. There is no other way to install a driveway to access the lots. The manufactured walls have to come out into the front setbacks to reach the roadway to hold dirt up into the property. To get the rock wall out of the setback, the contractors would need to move the house further downhill. The lot is small enough that if they are required to move the structure back, they will wind up deforesting the entire lot. By keeping the retaining walls where currently it is proposed, the rest of the proposed development (i.e., house) will meet the side setbacks requirements and keep natural trees on the lower part of the lot by the lower road.

Initially when Bont talked to Town Manager/Planner Burbank about the issue with the retaining wall being in the setback, they were thinking that it made no sense to be concerned about a rock wall going out to a private roadway to support a driveway. The intent of the fifteen foot (15') setback requirement was to keep folks from encroaching upon their neighbors properties. On the other hand, for safety reasons we want the manufactured walls to stabilize the lot to hold up the driveway to the house. The proposed wall is going to be poured reinforced concrete walls, faced with rock. Some portions of the wall are going to be twenty five (25) or thirty (30) feet high on the lower side. Town Manager/Planner Burbank thought it would be gorgeous. Town Manager/Planner Burbank said that what we are faced with is an approved lot with an eighteen

percent (18%) grade slope that they are putting a house on. The retaining wall is a “structure” by definition and it is going to have to be built into the front setback. What the staff needs from the Planning Board is a decision. Can Administrator Bont and Town Planner Burbank issue a Land Use Permit to people in that situation or does the Planning Board want everyone who will be building on steep lots to come into the ZBA for approval to put the retaining wall or “structure” into the front setback to support the driveway?

Chair Spanos said that virtually every lot on steep slopes would have to go before the ZBA.

Robinson asked if the rear wall was within the setback. Town Manager/Planner Burbank said that the manufactured wall will reach six to seven feet (6’- 7’) into the front setback. Robinson asked to confirm that the wall would not be twenty-five feet (25’) high right at the road.

Bont said as the wall goes into the road it diminishes in size, but the drop from the top of the wall to the ground a short distance into the driveway might be between seven and nine feet (7’ – 9’) high.

Town Manager/Planner Burbank said that on this lot, if the owner backs out of his garage and accidentally backs over the wall, his car will fall between ten and fifteen feet (10’ – 15’) to the ground. By the time the owner heads toward Hemlock Drive the height of the manufactured wall quickly comes to a height of between two and three feet (2’ – 3’) high; that is how steep the property is. The issue arises because the manufactured wall that supports the driveway is technically a “structure” that is sticking into the setback. Technically, we should make the property owner go to the ZBA to get a variance. However, the owners of every single lot in that area (and other steep areas in Town) is going to have to do that if they need a manufactured wall located within the front setback to support the driveway. Town Manager/Planner Burbank does not believe that was the intent of the Planning Board or the Town legislature when they decided to restrict building “structures” in the front setbacks in the Land Use Plan Ordinance.

Chair Spanos said that we could take the position that a manufactured wall that supports the driveway is part of their site work on a previously approved lot; when we approved the lot we thereby allowed them to build such a wall within the front setbacks.

Strickon said that we should at least give the Town staff the ability to say this is acceptable but this is not.

Hettinger said he was trying to picture this lot. When he backs out of his garage to the end of the driveway where this wall is, is he going to be fifteen (15) feet above the ground? So not only is this manufactured wall holding up dirt, it is also going to hold up a car or cars? Town Manager/Planner Burbank said the manufactured wall would be holding up the whole driveway and the cars. The manufactured wall is going to be made of concrete. There are other places in Town that have the same situation, but instead of relying on the support of a manufactured wall made of concrete, it is relying on a pile of stacked up boulders.

Hettinger said that was sad. He was worried about the safety of allowing such structures.

Robinson said the question the Planning Board members are being asked is, is a rock wall within the fifteen (15) foot setback considered a “structure”. If the Planning Board does not allow such a structure to be within the front setback, the property owners will have to go to the ZBA. Or was the setback restriction really applicable for the actual structure of the house? Is the manufactured wall for support of the site work to allow a house? And if it is, is that different?

Town Manager/Planner Burbank said that the setback we are talking about is off of Hemlock Drive. There is no noticeable effect on the abutting neighbor. Hemlock Drive (the road) will never have a house on it. In this development, even the water and sewer mains are out in the road. Another reason for restricting structures from being built within the setbacks is to keep the water, sewer and utility infrastructure accessible to the road so if you have to maintain the utilities you can. So even if the manufactured walls came right to the edge of the road, in this case they are not interfering with the maintenance of water or sewer or utility infrastructure.

Bont asked if the Town had to take over the roads, would a manufactured wall like this interfere with our ability to maintain the roads? Town Manager/Planner Burbank said, “No.”

Strickon confirmed that Town Manager/Planner Burbank was talking about a manufactured concrete wall with a rock face and not a traditional rock wall. Town Manager/Planner Burbank explained that a property owner can get more use out of the small steep property with a reinforced concrete wall than a properly constructed rock wall. Even if the property owner was constructing a rock wall and had enough land to construct one properly, we would still have the same issue.

Robinson said, looking at the broader picture, he would like to propose that a supporting wall, reinforced concrete or boulder, should be considered a “structure” for building code purposes, but not for setback purposes. A property owner cannot put his house in the fifteen foot (15’) setback, but he can put a rock wall or retaining wall in the setback to support his access to the lot or driveway.

Town Manager/Planner Burbank said that the staff is looking for a response from the Planning Board so that they have a definitive answer for anyone that wants to build on a steep lot.

Robinson said that he will make a motion:

A retaining wall “structure” is a “structure” for building code purposes, but is not a “structure” in consideration of the town setback requirements.

Bont suggested that the Planning Board limit that exception to allowing support structures for the driveway or for driveway access purposes only. Bont cited an example and said that a wall for RiverWalk was in the setback closest to the road and we asked them to move it.

Town Manager/Planner Burbank distinguished the RiverWalk example from the steep lot. Town Manager/Planner Burbank said that Rick Kelley, the General Manager for Loon Mountain Recreation Corporation and a representative of the owner of the right-of-way, (CLP Loon Mountain, LLC) said that the wall would be in their right-of-way and they did not want to see that wall in their right-of-way because they may want to widen the road in the future.

Bont asked Town Manager/Planner Burbank if Hemlock Drive was wide enough (ie., did it meet Town road standards)? Burbank thought so.

Grant asked this series of questions to challenge Robinson's proposal:

- If the setback is fifteen (15) feet and now the Planning Board is saying a moderately sized retaining wall "structure" can be located within that fifteen (15) foot setback, what is to stop the next guy from building his twenty foot (20') foot wall in the setback?
- Then suddenly the limit of the setback is no longer enforced. Assume this is your road. Then your neighbor is allowed to build anything (any "structure") within the setback. Then you want to widen the road, but the structure is located within the setback.
- Then the Planning Board says the lot owner can put any "structure" within the setback "without requiring any further adjustment". But the next guy comes along and he wants to put in a much larger and more substantial structure; He wants to put in a twenty (20) foot wall within the setback because he slopes the driveway a different way; so he can get his driveway up twenty (20) feet above the grade of the road and now you have a cliff right next to your neighbor.
- Those are some of the potential impacts of making that decision. If the Planning Board opens up the setback restriction for this case, then you have to consider that setback restriction to be wide open. It is one thing to come down to the road with the slope of the driveway, but what if you turn the driveway the other way? Then you are right against it in the setback.

Town Manager/Planner Burbank said that design-wise, if we enforced the setback requirement the property owners would have to move the house downhill and as a result would deforest the hill so they can get driveway to the house on the lot in. "Everything is outside, they will actually do that." It will be a steep grade that will level off to the house which creates erosion because they have to go with the slope of the land until they get down to an acceptable level to enter the house lot.

Robinson said that the Planning Board either needs to empower Administrator Bont and Town Planner Burbank to decide these matters on their own or to direct them to send every one of these steep lot cases to the ZBA.

Town Manager/Planner Burbank said that was exactly right because right now allowing the retaining wall to support a driveway on a steep lot is a ZBA issue. The manufactured retaining wall is a "structure" and the "structure" is located in the setback.

Hettinger said that the Planning Board may need to review each case individually. Town Manager/Planner Burbank said that could be done internally if we could get Planning Board approval. Bont added that she was not sure this was wise; she and Town Manager/Planner Burbank are not engineers.

Robinson said “Hypothetically, I want to build a six foot (6’) wall, and Callum comes in and wants to build a seven foot (7’) wall, is that okay? Now Ron wants to build a nine foot (9’) wall, where does it end?”

Grant asked about the angle of the slope within the setback, “Are you building with the slope or across the slope?”

A number of other hypothetical situations and how to handle them were discussed. Drainage was discussed as well as where the driveways were located and whether culverts were under each driveway.

Town Manager/Planner Burbank said that if a decision could be made it might save the two Boards a lot of work.

Robinson suggested that perhaps the Planning Board could come up with a list of criteria that could be used so that Administrator Bont and Town Manager/Planner Burbank could make decisions. Robinson thought that if there was a list of criteria to judge from a decision could be made. He suggested some parameters like:

- What is the overall height within the setback?
- What is the distance of the wall from the setback?
- Is the wall perpendicular or parallel to the road?
- How much vegetation is there?
- What is the width?

Town Manager/Planner Burbank said that the only time he and Bont would need to consider this issue is in a situation exactly like this example. The retaining wall would be to support the driveway entrance to the property. The retaining wall is not going to be built into the setback closest to his neighbors so that encroaching into the space between his lot and his neighbor’s lot will not be an issue. The access point from the road to his home on the lot is the only place that the retaining wall occurs within the front setback. In order to build the entrance to the lot, the retaining wall has to be built in the front setback.

Robinson said that building a driveway access from the downhill side of the road is different from building a driveway from the uphill side. If you are on the uphill side and want to pull the car into the lot parallel to the road, the whole retaining wall might need to be in the setback. Now the property owner is not talking about a structure that will cross a portion of the setback area; the retaining wall is within the setback area for the whole length of the wall. What if the parking area associated with the driveway is two (2) or three (3) car lengths long running parallel to the road – the wall within the setback could be forty feet (40’) long.

Town Manager/Planner Burbank asked the Planning Board what they wanted to see. Do they want the Planning Staff to direct the owners to site the house so the owners can keep that whole parallel wall outside the setback area yet within the building envelope of the lot? Burbank agreed that a

retaining wall parallel to the road would create a much larger visual impact than a retaining wall that supported a driveway that went straight into the lot, perpendicular to the road.

Robinson asked what if the property owner's choice was to make a cliff on their lot within the setback area? Or what if they created a long short wall? What if the short wall was a staged creation with many different ascending or descending levels? Could a short wall be a stepped or "staged" wall with many steps, but all located within the setbacks? Which do we prefer? Robinson said he would prefer three (3) short walls over a twenty foot (20') cliff.

Town Manager/Planner Burbank said that the step system takes up too much property. The property owners and their contractors prefer the taller walls because the lots are so small.

Fire Chief Beard said that if contractors want to build a rock retaining wall (versus a manufactured wall), under the NH State Building Code they have to build up four feet (4') and then back three feet (3') and then up again four feet (4') and then back again three feet (3'). The proper building scheme for a boulder retaining wall does eat up a lot of real estate.

Hettinger said that when he looks at this property, he sees that the situation is very precarious. On the corner of Hemlock Drive water runs down the road. Stormwater runoff always floods two (2) or three (3) houses down at the bottom of the hill. Hettinger said he did not think it was something that Bont and Town Manager/Planner Burbank should be involved with.

Town Manager/Planner Burbank said that he and Bont with Chair Spanos already temporarily decided that for every new application that comes in for a Land Use Permit to build a house located on a steep lot, the Town is going to get a third party engineer to review and look over the plans. The Town planning staff does not have the expertise needed to adequately review all of the various aspects of the watershed. Consequently, applicants will be required to submit a stormwater management plan. Right now we use Ray Korber through an escrow account. We have been using him for the Harris property. We do not have the expertise to look at it and it is complicated calculations.

Town Manager/Planner Burbank said that after a discussion with Town Engineer Korber, we decided to have Korber review the plans. Meanwhile, to recoup the cost for the third party review, we will charge between one thousand five hundred dollars and two thousand dollars (\$1,500-\$2,000) for every application to pay for third party review services. If we do not use some or all of the escrow money to pay for the third party review services, the applicants will get the unexpended money back.

Chair Spanos said the Planning Board does not have a decision. Town Manager/Planner Burbank said that then the ZBA is the answer, but the ZBA is going to get very busy.

Hettinger said that applicants "will have to go through the same thing". Town Manager/Planner Burbank said that he agreed and was not sure what guidance could be offered to the ZBA to help the ZBA make these decisions.

Strickon said that the ZBA only met twice last year. Town Manager/Planner Burbank said that was because the Planning and Zoning Department did not have any work for them.

Bont stated that applicants are supposed to use the ZBA rarely. ZBA hearings are supposed to be for projects when the applicant finds that if they cannot create the project unless they have to bend or break the rules in the zoning ordinance. The fact that we do not use the ZBA frequently is a good thing.

Hettinger said that it seems that if an applicant has to bend or break the Town rules about what we are requiring, it should be a warning sign.

Town Manager/Planner Burbank said that in the situation at hand, it is more important to have the property owner keep the existing trees and vegetation on his lot to prevent stormwater runoff from impacting downhill neighbors and infrastructure, even if it means having to site the house closer to the roadway and it causes that manufactured retaining wall to be anywhere from 0.6 or 7.0 feet into the front setback from the road.

Chair Spanos asked, “Can we just do these two houses and give you guidance on these two properties, but if more come in we can revisit it?”

Grant said it depends upon what the Planning Board is going to define as a “structure”. If we define the retaining wall as ancillary to the structure of the building, can the Planning Board get away with reviewing this issue as part of the Site Plan Review process as opposed to requiring the applicant to go to the ZBA for a variance? Grant said the Planning Board has engineering review privilege on anything that comes before us.

Town Manager/Planner Burbank said if our engineers are going to review it, the engineer will review it according to our written ordinance and good engineering practices. Burbank is not sure the Town has provided good enough guidance in the Land Use Plan Ordinance even for engineers. The black and white reading of the LUPO is, you can put the driveway in, put the retaining wall out to 15 feet outside the front setback area and get into your property any way you can. But I think the consequence of going this route is that we are going to create lots that are already approved by the Planning Board unbuildable. Potentially this could stifle sales of steep lots in our developments.

Robinson said, “Or it is going to cause a guy like this cut more trees down than he needs to?”

Hettinger said that whether or not the Planning Board allows building without mitigating stormwater runoff, people still could be liable for flooding homes down the hill.

Grant said that the purpose and intent of setbacks is just that, to set back structures from the edge of the lot. If anything that is going to encroach on that setback area is a variance.

Chair Spanos said the Planning Board cannot grant variances, only the ZBA can. A literal interpretation of the LUPO says this issue would have to go to the ZBA. If you want to find a gray

area and say that this is ancillary to the site work of these two lots, it could allow it to go forward without going to ZBA.

Town Manager/Planner Burbank said that there will be no problem until somebody calls us out. If we issue the permit, that house will get built. If we examine the houses that are already up, if we closely look at the houses currently being finished on Hemlock Drive, they have probably already done what we are questioning here. The contractor William (Bill) Cargill is the person who was asking what his options were. His client wants to build a house there.

Hettinger said that it will become a safety issue with public safety is involved.

Chair Spanos said that it is more of a structural issue.

Town Manager/Planner Burbank said that in his opinion the Town should be looking for manufactured walls on the steep slopes. We do not want to discourage the use of manufactured walls to support driveways because it will make much safer walls.

Bont said the Planning Board is meeting again in two (2) weeks. They will have the Water System Assessment Report presentation from David Edson P.E., from Hoyle, Tanner & Associates, Inc. Perhaps the Planning Board can think about this issue and then continue this discussion at the next meeting.

Chair Spanos said that Jonathan Harris with his attorney Michael Conklin of Conklin & Reynolds and his engineer Tyler Phillips, P.E., from Horizons Engineering are coming back to the Planning Board to address their request for a waiver of the stormwater management plan on March 23rd.

Town Manager/Planner Burbank said that to be fair to this homeowner they would like to get building so they can be in for the fall. They are trying to get the house designed and the lot prepped, so if we keep waiting two weeks, that is not fair to the homeowner.

Note: Harris does not need a manufactured retaining wall reaching into the setbacks to support the driveway. His only issue is whether he needs to provide a stormwater management plan or whether the Planning Board will waive that requirement or consider something less than a full plan, to mitigate stormwater runoff both during construction and after. Harris does not need to go to the ZBA.

Strickon said that now “they” [meaning William Cargill’s client] would have to go to ZBA. Chair Spanos said the need to go to the ZBA was based on a literal interpretation of the ordinance. Town Manager/Planner Burbank said the Planning Board at this point does not have any guidance to give the ZBA.

Hettinger said the property owners have to make the house smaller. Town Manager/Planner Burbank said that this house is already smaller than other houses in the neighborhood, but the lot is also a very small lot.

Grant said that if this issue does go to the ZBA, the ZBA has the ability to look at the specifics. For example, the ZBA would see where the retaining wall enters the front setback is starting out low as opposed to the cliff type. The property owner could have the manufactured wall engineered or have a third party engineer look at the wall and say whether it is safe or not to have it in the front setback.

Town Manager/Planner Burbank said that probably the cleanest way is to send this issue to the ZBA. If it becomes problematic because we are sending every applicant for a Land Use Permit to build a home to the ZBA, the ZBA can certainly communicate with the Planning Board to say that the ordinance needs to be amended to address this type of situation. Building on these steep lots is what is causing the issue.

Chair Spanos said that the ZBA will be unable to grant a variance for the whole development; the ZBA will have to grant a variance for every single lot, one lot at a time.

Town Manager/Planner Burbank said that contractor William (Bill) Cargill came in to consult with the Town Planning Department first because he knows the area. Cargill is asking for clarification before he even cuts a tree up there.

Robinson asked if the developer is still active in the development or if all the lots had been sold and the developer has left. Bont said that the present owner of the unsold lots is now the “developer”. The present owner is CRVI South Peak, TRS, Inc., out of Addison, Texas. South Peak Resort is just one folder of many in CRVI’s enormous financial portfolio.

Bont said that contractor Cargill implied there were three homes to be built in the pipeline. Cargill says he knows this because the contractors for the owners are going before the South Peak Resort’s Architectural Review Board for the Homeowners Association to get approvals.

Chair Spanos asked if South Peak Resort has restrictions on clear cutting the lot. Town Manager/Planner Burbank said, “yes”.

Robinson asked if their Architectural Review Board’s review would cover retaining walls. Town Manager/Planner Burbank said that the Architectural Review Board does not look at things that pertain to the Town Land Use Plan Ordinance or the State Building Code. They are more concerned with the color of the siding and roofing.

Robinson asked that if the Planning Board approved an owner’s request to build a house that has a twenty foot (20’) concrete manufactured wall rising straight up on the edge of the road to support the driveway would the Architectural Review Board for South Peak Resorts be fine with that? Town Manager/Planner Burbank said that the Architectural Review Board may require that the retaining wall be faced with rock so it looks like a rock wall like the house that Cargill is going to build. The Architectural Review Board might say, we want you to use this particular type of stone from one quarry in Vermont. In this case they cut the rock and then glue the rock onto the manufactured concrete wall.

Chair Spanos said South Peak Resort's Architectural Review Board cannot override the Town's Land Use Plan Ordinance. Robinson agreed, but said he was just looking for a source of some guidance. He was wondering if the South Peak Resort's Architectural Review Board had come up with something that addressed this problem, because that whole development is comprised of small lots with very steep grades. They must be running into this problem everywhere up there.

Bont said that the development known as "The Landing At Loon Mountain" will run into that same problem as well.

Robinson asked if anyone could think of something the Planning Board could do with Lincoln's Land Use Plan Ordinance that every one of those lots does not have to go to ZBA for a variance.

Fire Chief Beard said that it seems to him that the downhill lots are the bigger issue.

Town Manager/Planner Burbank said that he thought that too, but Grant brought up a good point. We may have problems if a property owner's driveway goes up from the road and then it turns and runs parallel to the road. We could end up with a twenty feet (20') sheer manufactured retaining wall in the front setback. The property owner could ask to be allowed to put the retaining wall in the setback to support the driveway in order to get the house on the lot.

Hettinger said that he thought it was amazing that some of those people up in the South Peak Resort can even get up their driveways in the winter. Fire Chief Beard agreed. Chief Beard said that on the corner of Buck Road and Hay Hill Road on the uphill side there is a tiered rock wall. The property owner has a hammock out there in the summertime.

Chair Spanos said that the only way the Planning Board could grant a blanket approval is to somehow change the wording in the ordinance because the rock walls are considered "structures".

Robinson said that he liked that idea in theory, but Grant brought up a good point. If the Planning Board does that, someone is going to build a forty foot (40') retaining wall within the front setback only a few feet from the road straight up and it will look hideous. Robinson wondered if the Architectural Review Board could prevent that sort of perversion of the intent of what the Planning Board is trying to do.

Bont said she understands that David Yager is on the South Peak Resort Architectural Review Board. Cargill showed her a document and there are only three people listed as being on the Architectural Review Board – in total.

Town Manager/Planner Burbank said that Forest Ridge has an Architectural Review Board as well. The two most active groups right now would be South Peak Resort, Forest Ridge, and The Landing at Loon Mountain (eventually), so maybe we could have an informational meeting with the members of those two active Architectural Review Boards.

Robinson said that allowing the property owner to build a retaining wall within the front setback makes sense if the owner does not build a nine foot (9') high wall next to the road. Town

Manager/Planner Burbank said that common sense says, let him build the retaining wall for the driveway.

Robinson asked whether the Planning Board could direct these two property owners through that process, but then get David Yager and other members of the Architectural Review Board for both Forest Ridge and South Peak Resort in here and have an informational session with the Planning Board? The Planning Board could say to the Review Boards, “This is the problem we are facing right now.” Every one of these applications for a Land Use Permit needs to go to ZBA for a variance to allow them to build a “structure” (i.e., a retaining wall) within the front setback to support the driveway.

Chair Spanos said that maybe the two Architectural Review Boards can give the Planning Board copies of their rules of procedure so the Planning Board can review them before we meet with the two boards personally.

Hettinger said there are another two lot owners who are going to have this same problem so we should probably review those other two lots at the same time.

Robinson said that the Planning Board could have “a free for all”. The Landing at Loon Mountain can come in with South Peak Resort and Forest Ridge Resort. The Planning Board could say to them, “We are looking for information on how we can deal with these steep lots so they can use the setback for retaining walls without it becoming absurd, like a 40 foot wall.”

Town Manager/Planner Burbank said that there is a serious difference between creating direct driveway access to the property supported by a wall (uphill or downhill), and creating a driveway that comes in from the road and then turns, for whatever reason, and runs along a wall in the setback parallel to the road to create a parking area – that “becomes a whole different thing”. We are only talking about a driveway entrance to the property.

Robinson said maybe the Planning Board should talk to the members of the Architectural Review Board about both possibilities with separate rules for each.

Fire Chief Beard said if a property owner is just driving in with enough space to back out of his garage, we could set distance limits for an entry with guidance on creating adequate turnarounds or turnouts to allow vehicles to back in and out or to allow a vehicle to turn fully around on the property without having to back up.

Robinson said that a driveway with twenty feet (20') of setback infringement then you are talking about the driveway going perpendicular to the road. If you are talking about more than twenty feet (20') you are talking about a driveway going more parallel to the road. Fire Chief Beard said such a driveway would have a switchback in it. Robinson said maybe that is the difference.

Town Manager/Planner Burbank said that if it is a twenty foot (20') wide driveway it only has to go into the lot fifteen feet (15') from the edge of the road and the driveway is outside the setback area and into the building envelope. You are only talking about a fifteen foot (15') setback from

the road to their building envelope. A twenty foot (20') wide driveway that is fifteen feet (15') long and then they can turn left or right within the building envelope.

Hettinger said that the nonporous surface changes.

Town Manager/Planner Burbank said that would be true whether they pave the driveway or not. Bont said that the Driveway Regulations requires them to pave their driveways.

Town Manager/Planner Burbank asked why we would require driveways to be paved if we are so worried about impervious surfaces? Robinson said the Town is reducing the amount of area needed for their driveway by allowing the property owners to put in a retaining wall to support the driveway. Town Manager/Planner Burbank said that could be the ZBA's answer because of the steepness of that lot, we would prefer the driveway to be closer and shorter because that would cut down on the area of impervious surface needed.

Chair Spanos said that the Planning Board cannot make a decision for the ZBA. Hettinger agreed that would be the ZBA's decision.

Robinson said "Could we give you permission that where there is a twenty foot (20') swath of setback that they are infringing on, that you have the authority to go ahead and do it. Beyond that, which means the [driveway] curves or switch back, then that means [the request] goes to the ZBA?" Grant said he thought that would be acceptable for "a straight in driveway".

Town Manager/Planner Burbank said that would do it and suggested "Let us evaluate to that point. That means we would not have to come to you guys every few weeks." Fire Chief Beard said, that would be the only thing the staff could allow; anything else would have to go to the ZBA.

Chair Spanos said that if the Planning Board is saying the lot owners do not need to go get a variance, they are making a determination that is the retaining wall to support the driveway is ancillary to the driveway and is not a "structure" for the purposes of the Land Use Plan Ordinance.

Town Manager/Planner Burbank said that if the application is something the staff can determine they will go ahead and if they are uncomfortable with it, they can put the applicant through the ZBA process.

MOTION: A retaining wall that infringes into the setback that does so in less than 20 feet of frontage we would consider an ancillary site work improvement that you can approve with an executive decision. Anything beyond the 20 feet would need to go to the ZBA for approval.

Motion: Ron Beard

Second: Paula Strickon

All in Favor: (5,0)

Robinson said that is a good example of how a committee works. The Planning Board had about four (4) different ideas about how to approach the issue and through collaboration we agreed on a course of action.

Town Manager/Planner Burbank said that the “new-bee” came up with it. Once they go in beyond that fifteen feet (15’) it is subject to the Land Use Plan Ordinance.

Fire Chief Beard said that the another reason why that came to mind is he has been trying to figure out how he is going to get his fire trucks in to fight a fire. How many driveways have been put in that he cannot maneuver into, even his Engine 2, because of the switchback? If we give the property owners the option to have the driveway go in straight off the road, he can pull his engine up in front of the driveway, and pull his hoses off and he is “at the house”. Where if we allow all the switch backing we eat up more property. Chair Spanos asked if he usually pulls up the driveway or stays out in the street. Beard said that there are houses up in the Landing that he cannot get the firetruck in because of the swale or switch back.

Town Manager/Planner Burbank said that you still might not get away from that because we are only going to go from the roadway to the fifteen foot (15’) setback. If there is a wall there we are not going to consider it a structure. The structure is going to start at fifteen foot (15’) one inch (1”).

Fire Chief Beard said that on some of these lots it will make the house more accessible to have a straight driveway. Robinson asked Bont if she was comfortable making a determination on that. Bont said that she would make Town Manager/Planner Burbank make the decision with her. Bont said she is trying to figure all possible the permutations. There was a brief discussion about people driving off the top of rock walls.

- V. PUBLIC PARTICIPATION AND OTHER BUSINESS:** Public comment and opinion are welcome during this open session. However, comments and opinions related to development projects currently being reviewed by the Planning Board will be heard only during a scheduled public hearing when all interested parties have the opportunity to participate.

Chair Spanos reminded board members that once they that are reappointed they need to swear their oath of office. He suggested that the Planning Board make the terms end on Town Meeting day so we have a consistent start and end date. Two years from now we need to reinstate the terms.

VI. ADJOURNMENT

Motion to Adjourn at 7:54 PM.

Motion: OJ Robinson

Second: Paula Strickon

All in favor.

Respectfully submitted,

Wendy Tanner,
Planning and Zoning Recorder

Date Approved: March 23, 2016



James Spanos, Chairman