

**LINCOLN PLANNING BOARD
REGULAR MEETING MINUTES
WEDNESDAY, JANUARY 24, 2018 – 6:00PM
LINCOLN TOWN HALL - 148 MAIN STREET, LINCOLN NH**

APPROVED

Present: Chairman Jim Spanos, John Hettinger, Paula Strickon, Ron Beard (alternate & Fire Chief).

Members Excused: Vice-Chairman R. Patrick Romprey, Alternate Norm Belanger, Alternate Callum Grant, OJ Robinson - Selectmen's Representative.

Members Absent: None.

Staff Present: Planner Carole Bont; Ellyn Gibbs, Recorder

Staff Excused: None.

Guests:

- **Myles Moran**, resident, 11 O'Brien Avenue (Map 117, Lot 024) owned by Mary J. Levitsky, 11 O'Brien Avenue, PO Box 184, Lincoln, NH 03251-0184 and owner of Udderly Delicious Ice Cream Shop at 121 Main Street, Lincoln, NH 03251, and Principal/Broker for Moosilauke Realty, 104 Main Street, North Woodstock, NH 03262, Alternate member of the Zoning Board of Adjustment.

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

Chairman Spanos called the meeting to order at 6:00 pm.

Callum Grant, Norman Belanger, OJ Robinson, and Pat Romprey were excused.

Ron Beard was seated.

- II. CONSIDERATION** of meeting minutes from:

- January 10, 2018

Hettinger pointed out an inaccurate date on the minutes. Strickon said that "200 hours a week" was inaccurate on line 450, because there are only 168 hours a week. She suggested we leave it in with a clarification communicating a possible exaggeration.

Spanos said we should add the phrase "no one had any objections" to his question in the last paragraph.

Motion approve the minutes of January 10, 2018 as amended.

Motion: Hettinger **Second:** Strickon **All in favor:** (4-0)

- III. CONTINUING AND OTHER BUSINESS**

A. 6:00 PM: PUBLIC HEARING RE: PROPOSED CHANGES TO LAND USE PLAN ORDINANCE (LUPO) Draft Language available on town website & at Town Offices.

- 1. Revise Criteria for Special Exception**

Add to and make revisions to Article VIII Board of Adjustment, Section A, Board of Adjustment, Paragraphs 1-4 so the ZBA can consider additional factors in determining whether to grant a Special Exception.

Presentation:

Planner Bont presented the Planning Board with a color-coded draft of new proposed changes to the earlier proposed language for criteria to be considered by the Zoning Board of Adjustment when deciding whether to grant a Special Exception. The new draft included changes made in an effort to respond to suggestions and critiques in the letter to the Planning Board from ZBA member Ray D'Amante (dated January 8, 2018). (See attached Exhibit A.)

In his letter, D'Amante recommended that the Planning Board adopt some definitions and standards for wetlands and steep slopes and reference applicable state statutes that refer to other environmental constraints like floodplains and shorelands. Bont said when she attempted to do so, she realized that D'Amante may not have had an opportunity to look comprehensively at what is included or not included in the full zoning ordinance; she believes that perhaps he was only focused on the section of the ordinance that pertains to the criteria for granting a Special Exception. Because of this limited view she did not think the suggested changes would work without making some comprehensive changes to the entire ordinance. Perhaps the Planning Board could look at these environmental constraints more comprehensively at a later time. (See attached Exhibit B.)

Bont said, for example, in the zoning ordinance known as the Land Use Plan Ordinance (LUPO) the Town did not create any definitions, standards or guidelines for wetlands or steep slopes anywhere else in the ordinance. It did not appear that the Planning Board intended to address these environmental constraints when the ordinance was created in 1986 or in the thirty-seven (37) years since that time. At the time the Planning Board created the zoning ordinance and the Town Meeting voted to adopt it, they chose not to address either wetlands or steep slopes as part of their comprehensive scheme. Arguably they could have; however, at this time the ordinance does not include any provisions that either define wetlands or steep slopes or address standards associated with them.

Bont said that on the other hand, the zoning ordinance does define and address areas within the Floodplain Development District that are variously called the "Special Flood Hazard Areas" also called the "floodplain", the "base flood area" or the "100-Year Floodplain".

Bont said the zoning ordinance also defines and addresses the Shoreland Protection District Area as defined in the State Comprehensive Shoreland Protection Act. The zoning ordinance defines "Protected Shoreland" as all land within two hundred fifty feet (250') of the public boundary line of public waters as defined by the State. However, certain building is allowed within that protected shoreland although the Town also has areas that are specifically exempted from the State Comprehensive Shoreland Protection Act by the State of New Hampshire.

Bont said zoning ordinances in other towns do define and create specific standards to address all of these "environmental constraints". At this time the Lincoln zoning ordinance does not.

Bont said that in the context of Site Plan Review, although the Planning Board looks at those environmental constraints there are no specific standards for either wetlands or steep slopes. For example, there is "no clear cutoff" meaning it is not clear from the zoning ordinance that an owner cannot build on a "steep slope" defined as a slope greater than fifteen percent (15%) or

twenty percent (20%) or some other specific percentage.

Bont said that one problem with changing the language by just referring to Section D, Floodplain Development District, is that the Town, State and Federal governments allow people to build within the floodplain with limitations. For example, because the Town participates in the federal program for subsidized flood insurance, someone can build within the defined Special Flood Hazard Areas as long as they complete “flood proofing” which is also defined. The building constraints associated with the floodplain is already addressed in the zoning ordinance. When members of the ZBA review the “environmental constraint” of the Special Flood Hazard Areas their guidance should come from the relevant language in the rest of the zoning ordinance. Bont said she does not think that the list of criteria for granting a Special Exception needs to specifically address the State or Federal Statutes that pertain to the flood base elevation. There are several definitions in our ordinance with similar meanings; for example, the special flood hazard area is one, base flood elevation is another, and one-hundred-year floodplain is another. The same nuances are applicable to areas within the protected shoreland district. The Town could make a reference, as she has done on this colorful handout.

Bont said she also tried to find a good definition of “usable space”. She looked at a lot of different zoning ordinances and this was the best definition she could compile for “usable space.”

Bont said that in context of determining whether to grant a Special Exception, members of the Zoning Board already have an idea of what they think “usable space” is. The Planning Board, in the context of a Site Plan Review, would also have some idea of what “usable space” is. “Usable space” is not such an obscure phrase that members of the Planning Board could not their common sense to figure out what is meant by “usable space”. If the Planning Board wanted to define “usable space” it should be part of a much broader discussion of what areas the Town wants to remove from “developable space” than what criteria should be used to determine whether or not the ZBA should grant a Special Exception. For example, in determining “usable space” and for the purpose of determining density, are wetlands included or not? Are roadways included or not? This discussion is for another day.

The one proposed change that that Bont said she felt strongly was important to address right away that D’Amante included in his letter was: he wanted to make it clear that if someone had a large ninety-nine (99) acre parcel that had one small environmental constraint on a small portion of the lot he/she would not be prevented from being able to use the rest of the entire parcel. Bont said she thought the Planning Board could address that problem by amending the language by applying 2.iii on the other sheet.

- iii. **Absence of environmental constraints within the proposed development or project area, including but not limited to floodplain, shoreland, wetlands and steep slopes.**

Questions from Planning Board:

Chair Spanos suggested taking out the reference to “steep slopes” because “steep slopes” are not defined anywhere else in the zoning ordinance.

Bont said that in certain situations the Planning Board might want to allow members of the ZBA be able to decide not a grant a Special Exception when a steep slope would present a problem for access for fire suppression for example. The language as presented allows the ZBA to look at steep slopes in general. Most communities define “steep slopes” in their zoning ordinances by

choosing a certain percentage, indicating that certain development cannot take place if the steepness of the slope is equal to or greater than a certain percentage. The website for New Hampshire Office of Strategic Initiatives (OSI), formerly the Office of Energy and Planning (OEP), says that most communities in New Hampshire choose to define “steep slope” as fifteen percent (15%) or greater slope. If the Planning Board chose that specific number to define “steep slopes” in Lincoln and the Town voted to adopt it, then the Planning Board would not have to address steep slopes anywhere else in the ordinance. At this time the Town of Lincoln does not have any specific restrictions on development on steep slopes. Bont thinks the ZBA would probably have that same perception when they are evaluating a request for a Special Exceptions.

Hettinger said the zoning ordinance did not really define a “steep slope”, but thought that the Planning Board and the ZBA had to take a broader view. The lot might be too steep in one section, but not in another. Bont said that some towns like Lyme take an average over a certain expanse. For instance, the town of Lyme has language about averaging in its zoning ordinance, while the town of Hanover does not.

The Town of Lyme zoning ordinance has both a Steep Slopes Conservation District and a Ridgeline and Hillside Conservation District. The Steep Slopes Conservation District is defined as all areas where there is an elevation change of 20 feet or greater and the average slope is 20 percent or greater. Development in these areas is very limited.

The Town of Hanover zoning ordinance defines “steep slopes” as follows: “Unless on-site survey shows otherwise, steep slopes are all lands 25 percent and over in slope as designated in ‘Soil Survey of Grafton County Area, New Hampshire’ published by U.S. Department of Agriculture, Natural Resources Conservation Service.” Development in this “Forestry and Recreation” zone is very limited.

Strickon talked about what a fifteen percent (15%) slope would look like: it would be a rise of fifteen feet (15’) over a horizontal distance of one hundred feet (100’).

Hettinger does not want to exclude properties with steep slopes from development.

Bont said the part of the proposed change to the zoning ordinance under consideration is the list of criteria for the ZBA to consider in granting a request for a Special Exception. If the applicant’s request for a Special Exception is related to a commercial development, the Planning Board will be looking at the project in the context of a Site Plan Review anyway. A request for a Special Exception arises because some use is allowed in a certain district, but not as the matter of right. The applicant needs to make a case for putting the use in a certain location before the Zoning Board of Adjustment. What tools do you want to give the ZBA to consider as they are deciding whether to grant the request for a Special Exception? Do you want the ZBA to be able to look at steep slopes without necessarily defining the percentage? At this time, it does not make sense to define steep slopes with a specific percentage for the purposes of the ZBA granting a Special Exception when the Town has not defined “steep slopes” elsewhere in the zoning ordinance.

Bont said wetlands is the other big issue. Does the Planning Board want to allow the ZBA to consider wetlands when granting a Special Exception? Wetlands are under the State's jurisdiction, but the Lincoln zoning ordinance does not treat wetlands differently than other types of land. Many municipalities have zoning ordinances that are more stringent than state laws and often include wetland setbacks. Lincoln does not. The Planning Board might want to consider wetlands in the course of a Site Plan Review or have the ZBA consider wetlands when reviewing a request for a Special Exception.

In New Hampshire, jurisdictional areas include: wetlands, surface waters, the prime wetland buffer, the tidal buffer zone and sand dunes.

Wetlands are identified based on three criteria:

- hydric soils - A soil that formed under conditions of saturation, flooding or ponding long enough during the growing season to develop anaerobic conditions in the upper part
- hydrophytic vegetation - Vegetation typically adapted for life in saturated soil conditions
- hydrology - The area is inundated with water either permanently or periodically or the soil is saturated to the surface at some time during the growing season of the prevalent vegetation.

Examples of wetlands include, but are not limited to: swamps, bogs, marshes, forested wetlands, wet meadows and vernal pools.

The Town has no municipally designated "prime wetlands". The NHDES Shoreland Program requires a 50-foot setback for all new primary structures on "protected surface waters" and a 20-foot setback for accessory structures such as sheds, gazebos and patios.

NHDES Consolidated List of Waterbodies Subject to RSA 483-B, the Shoreland Water Quality Protection Act (SWQPA) includes the following "protected surface waters" in the Town of Lincoln:

River/Streams:

1. East Branch Pemigewasset River from juncture of Carrigain Branch,
2. Franconia Branch from juncture of Lincoln Brook in Franconia;
3. Hancock Branch from Juncture of Pine Brook;
4. North Form East Branch Pemigewasset River from Juncture of Jumping Brook;
5. Pemigewasset River from Juncture of Harvard Brook in Lincoln.

Lakes/Ponds:

1. Bog Pond;
2. Lonesome Lake also known as Tamarack Pond;
3. Loon Pond.

<https://www.des.nh.gov/organization/divisions/water/wetlands/categories/faq.htm>

Strickon said she would like to see the “steep slopes” included in the ordinance because Lincoln has a lot of properties with steep slopes.

Motion to open public comment.

Motion: Hettinger

Second: Beard

Motion carries (4-0).

Myles Moran said that he agrees that with the number of slopes the Town of Lincoln has around here, it does not hurt anything to include the phrase about steep slopes; it does not hurt to give the ZBA the tools to consider steep slopes in determining whether to grant a Special Exception.

Beard said that leaving the door open for granting a Special Exception on steep slopes is a good thing. A lot of these steep areas can work with proper engineering, so it is not right to shut development down on steep slopes. If it is “do-able” this would leave the option open.

Motion to close public comment.

Motion: Hettinger

Second: Strickon

Motion carries (4-0).

Motion to send proposed warrant article to town meeting.

Motion: Strickon

Second: Beard

Motion carries (4-0).

IV. NEW BUSINESS:

Bont informed the Planning Board that Dipak Patel who wants to build the Hampton Inn is still working on his plan and may be coming in for a conceptual with some new ideas. (Trash, fencing, keeping a lot set aside for a restaurant, etc.)

Strickon questioned how the parking would work if the Hampton ends up building a restaurant.

Bont said that the inn and the restaurant would be two (2) separate entities. They would be required to provide one (1) parking space for every four (4) seats in the restaurant and one (1) parking space for every hotel unit. She said they are dealing with the height issue but she does not know how. Beard said he heard they were thinking of making the inn only three (3) stories.

No cases are scheduled for Valentine’s Day yet.

V. ADJOURNMENT

Motion to adjourn at 6:10 pm.

Motion: Strickon

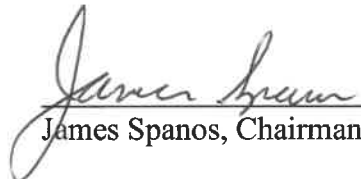
Second: Spanos

All in favor: 4-0

Respectfully submitted,

Ellyn Gibbs
Recorder

Date Approved:


James Spanos, Chairman