

**TOWN OF TUFTONBORO
PLANNING BOARD
October 6, 2016
MINUTES**

Members Present: Chris Sawyer, Chairman, Jack Parsons, Vice-Chairman, Bill Marcussen, Selectmen's Representative, Matt Young, Fenton Varney, Members.

Members Absent: John Cameron, Tony Triolo, John Lapolla, Members.

Staff Present: Lee Ann Keathley, Administrative Secretary.

Chairman Sawyer opened the meeting at 7:06 PM.

**I. Consideration of Minutes
September 15, 2016**

It was moved by Bill Marcussen and seconded by Fenton Varney to approve the September 15, 2016 Tuftonboro Planning Board minutes as submitted. All members voted in favor. The motion passed.

II. Discussion Items

a. Herrick Lot Merger

Chris Sawyer stated the Board approved a lot merger for Louise Herrick at its 9/15/16 meeting however, the applicant contacted Staff and asked that the lot merger not be recorded. She stated the applicant no longer wishes to merge the two lots and noted the merger was not recorded at the Carroll County Registry of Deeds. She stated that since the decision has not been recorded, Town Counsel advised the Board to rescind the approval of the lot merger.

It was moved by Fenton Varney and seconded by Matt Young to rescind the Louise R. Herrick Lot Merger, Tax Map 52-3-41 and 52-3-42, at the request of the applicant. All members voted in favor. The motion passed.

b. 2017 Budget

Staff informed the Board that the LRPC annual dues have increased from \$4,165 to \$4,193 for 2017. She stated she ordered the Land Use Regulations books; noting the purchase in the amount of \$86 would be reflected against Books and Periodicals and the purchase of office supplies in the amount of \$242.83 would be reflected in the next monthly expenditure report.

Following further discussion of the 2017 budget, the Board agreed to recommend the following changes to the BOS;

- Increase Administrative Assistant to \$6,629
- Increase Lakes Region Planning Commission to \$4,193
- Incorporate new budget line titled "Master Plan Review" & request \$5,000 for that line

Referencing the incorporation of a Master Plan Review budget line, Chris Sawyer stated the Planning Board budget had always included such until it was removed a couple of years ago.

The Board agreed to request an appropriation of \$5,000 due to outstanding costs that were not included in the 2015 warrant article. The Board noted such costs include printing the Master Plan, Staff's clerical responsibilities relative to changing the narrative and formatting of the existing Master Plan to accommodate for the updates to specific chapters.

c. **2017 Zoning Changes**

The Board reviewed the following proposed zoning changes;

Amend Section 1.1 DEFINITIONS as follows:

Add **Residence: The place in which a person lives or resides; dwelling place; a structure serving as a dwelling or home.** (definition of Residence to become Section 1.1.43 and all following numbering to change accordingly)

Amend Section 10.4.1 as follows:

10.4.1 Limitations: Such occupancy of either tents or recreational vehicles at any ~~R~~Residence shall not exceed a total of four **consecutive** weeks per year. No more than one such unit may be occupied in connection with any ~~R~~Residence.

Jack Parsons stated the Town needs to be able to enforce its Zoning Ordinance; noting that he is currently unable to enforce Section 10.4.1. He stated he research other communities and noted that the Town of Wolfeboro does not permit such and the Town of Alton doesn't address the issue.

Fenton Varney questioned the limitation if a residence does not exist.

Matt Young asked why the Town would stop an owner from occupying their land as long as waste is disposed of properly; noting such is a health safety issue.

Jack Parsons stated he spoke to Town Counsel, Rick Sager, regarding the ordinance as it is currently written; noting Attorney Sager opined that there has to be a residence on the property. He stated it is difficult to regulate the ordinance as it is currently written.

Fenton Varney questioned whether the issue remains if a portable toilet is on site. He questioned whether on-site septic could be requested.

Jack Parsons stated the owner could provide proof of septage disposal off site. He noted NH DES prohibits holding tanks.

Fenton Varney volunteered to draft language for review by Town Counsel.

The Board agreed to table such until draft language is provided and reviewed by Town Counsel.

The Board reviewed the following proposed zoning change;

Amend Section 17.8.3 as follows:

17.8.3 Variances: The Board of Adjustment shall hear and decide requests to vary the terms of this Ordinance. At the hearing on the application, the applicant shall present testimony and other evidence to establish that all five conditions for a Variance have been met. The decision of the Board shall be based on the evidence presented at the hearing, not on allegations contained in the application. Abutters and residents shall be entitled to present testimony and other evidence to establish that the applicant either has or has not met all five of the listed conditions below.

~~A. No Variance shall be granted unless all of the following conditions are met:~~

~~1. A hardship must exist which is inherent in the land in question and which is not shared in common with other parcels of land in the District.~~

~~2. The spirit and intent of the Ordinance will not be broken by granting the Variance.~~

~~3. The granting of the Variance will not adversely affect other property in the District.~~

~~4. Not to grant the Variance would result in injustice.~~

~~5. Granting the Variance would not be contrary to the public interest.~~

A. No Variance shall be granted unless all of the following conditions are met:

1. Granting the Variance would not be contrary to the public interest.

2. If the Variance were granted, the spirit of the Ordinance would be observed.

3. Granting the Variance would do substantial justice.

4. If the Variance were granted, the values of the surrounding properties would not be diminished.

5. Unnecessary Hardship

A. Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship.

1. There is not a fair and substantial relationship between the general public purpose of the ordinance provision and the specific application of that provision to the property.

2. The proposed use is a reasonable one.

B. If the criteria in subparagraph A has not been established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a Variance is therefore necessary to enable a reasonable use of it.

Staff stated the proposed changes to Section 17.8.3 reflect the current RSA relative to such; noting there is no longer a distinction between an Area Variance and a Use Variance. She stated she provided the ZBA the information in order to update their existing applications to reflect the State's standards.

d. Compliance with 155:E (Excavation Operations)

The Board reviewed draft Excavation Regulations; noting such would be a proposed zoning change and incorporated into the Zoning Ordinance as Section XI. (all sections to be renumbered thereafter). The Board agreed to the proposed language for Sections 11.1, 11.2, 11.3, 11.4, 11.5, 11.9, 11.10 and 11.11. The Board agreed to request Roger Murray III to prepare a letter from the Board to be sent to all existing active excavation operations requesting compliance with RSA 155:E; noting the Board would offer an 18-month window to allow for such to occur. The Board also agreed to request Town Counsel guidance as to whether the Board could propose an exemption to existing operations that are currently not in compliance.

The Board agreed to the following revisions;

- Section 11.6; insert "RSA 155-E:2-a or"
- Section 11.8; revise to reflect the following, " No firm, person or corporation shall conduct earth excavation activities as defined in Section XI: Local Regulations of Excavation without first obtaining a Special Exception from the Zoning Board of Adjustment and Site Plan Review approval and an Excavation Permit from the Planning Board." ~ Fenton Varney to further review.
- Section 11.7, Exceptions From An Excavation Permit; to read as follows;
 - A. The following projects are deemed to be an exception from a permit:
 - 1) Site development, construction activities, or other projects, that require excavation of earth and will not remove more than 1,000 cubic yards of earth from the site. In the event that the project will result in the removal from the site more than 1,000 cubic

yards, the project will be considered incidental provided that all of the required state and local permits have been issued.

- 2) Excavation of earth that is a result of agricultural use, normal landscaping or minor topographical adjustment as defined in Section III of these regulations. In the event that the project will result in the removal of more than 1,000 cubic yards from the site, the regulator shall determine what is incidental.
- 3) Excavation from a granite quarry for the purpose of producing dimension stone, if such excavation requires a permit under RSA 12-E (Mining and Reclamation).

e. Master Plan Update

The Board reviewed the preliminary “Draft” results of the Master Plan survey as it relates to comparison of percentages to the questions noted on the survey. The Board noted 2,139 surveys were distributed and 1,025 were returned; noting a 47.9% response rate. The Board discussed rezoning the existing zoning districts with assistance from LRPC. The Board agreed to forward the draft survey results to the BOS.

III. Informational Items

None.

IV. Other Business

Future Work Program

Jack Parsons requested the Board review the Zoning Ordinance, specifically Permitted Uses within existing Zoning Districts as a future work program item.

It was moved by Matt Young and seconded by Fenton Varney to adjourn the October 6, 2016 Tuftonboro Planning Board meeting. All members voted in favor.

There being no further business before the Board, the meeting adjourned at 9:00 PM.

Respectfully Submitted,

Lee Ann Keathley

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