

PLANNING BOARD MINUTES

January 10, 2007

ROLL CALL:

Phil LoChiatto, Chairman – Present	Ruth-Ellen Post, Vice Chairman – Present
Nancy Prendergast, Secretary – Excused	Walter Kolodziej, Regular Member – Present
Ross McLeod, Regular Member – Present	Pam Skinner, Regular Member – Present
Neelima Gogumalla, Alternate – Present	Rick Okerman, Alternate – Not Seated
Margaret Crisler, Selectmen Member – Excused	Alan Carpenter, Selectmen Alternate – Present

STAFF:

Al Turner, Director of Planning and Development – Present
Shaun Logue, Town Planner – Present

Mr. LoChiatto opened the meeting at 7:30 pm. Ms. Gogumalla replaced Ms. Prendergast.

MINUTES:

- Mr. McLeod motioned to approve the January 3 minutes. Ms. Post seconded. Passed 6-0-1. Mr. Carpenter abstained.

BONDS:

- Haffners Fuel Site bond, new bond for \$1,325. Mr. McLeod motioned to accept the bond. Mr. Kolodziej seconded. Passed 7-0.

CORRESPONDENCE:

- Letter from the Windham Cooperative Kindergarten and Nursery regarding hearing their site plan on January 31 (there is not a Planning Board meeting scheduled for that evening). Board discussion: Is there any precedence for this, usually meetings are added for local government or school business, there should not be special consideration for this, maybe a meeting on January 31 should be added, Mr. Carpenter stated that his wife is the agent for the Kindergarten, this is extenuating circumstances, the Kindergarten is not a public school but it is a non-profit kindergarten for Windham children as there is no public kindergarten, the school is moving because the State has taken their current property, and any continued items from the meeting on the 17th would be placed in front of the Kindergarten on January 31 to keep the agenda in order. Mr. McLeod motioned to have January 31 be a regular meeting so that staff can accept applications for public meetings that night. Ms. Post seconded. Passed 7-0;
- Town and City Booklet;
- The Great Mt View Estates court decision which upheld the Planning Board decision;
- Letter to Mr. Kolodziej regarding requiring NH certified engineers and surveyors;
- Letter to Sam Nassar explaining how to order Planning Board video tapes and Mr. Nassar's letter requesting Planning Board video tapes.

LIAISON REPORTS:

Alan Carpenter, Selectmen: 1st budget was hearing last Monday night, and will be wrapping up the budget this coming Monday.

Pam Skinner, Conservation Commission: The Commission is meeting tomorrow night.

OLD/NEW BUSINESS:

Mr. Turner stated that there are meetings with the DOT regarding a grant for joining together three towns (Windham, Derry, and Pelham) for GIS mapping.

PUBLIC HEARINGS:

Citizens Petitions:

Petition #1 by Mary E. Griffin and others, to rezone approximately 29 acres of vacant land at intersection of Route 111 (aka Indian Rock Road) and Wall Street. Herein referenced 29 acres is listed on the Town of Windham assessor's map as, Tax Map Lot 11-C-800. The petition is to rezone the existing property from "Professional/Business/Technology" to "Business Commercial A District." The subject land is at the northeast quadrant of Wall Street and Route 111. The proposed entrance to the property is across from the Shaw's Supermarket entrance road and the NH DOT Park-n-Ride" lot. The proposed development on the subject property would be a retail development with access to Route 111 via the new traffic signal installed at Wall Street.

David Baker, RK Associates: He was a part of developing the Shaws site, he spoke at the 1st public hearing for zoning amendments, wants to rezone the land across Wall Street from Shaws, he showed the location on the map, the map also showed the realignment of Rt 111, he is proposing a multi-tenant site, he does not have any names for prospective tenants, the current zoning is Professional Business and Technology, he would like it to be Business Commercial A, he worked well with the town and community while developing Shaws and would do the same for this parcel, it is a good site for retail development for Windham, the parcel has had the current zoning for the past seven years and nothing has happened there, the existing lot condition is wooded and wetlands, the developed property would bring in more tax revenue, the traffic would be in the morning at lunch time and in the evening, the development would have it's own well, septic, and water treatment facility, the traffic would be already existing traffic on Rt 111 and not generate more trips, he showed a plan with a potential office building on the property, the current taxes for the property is \$13,482, he calculated that the developed parcel would generate \$442,500 in tax revenue, the traffic signal was overbuilt to handle the development of this site, he is willing to work with the Town, and asked the Board to support the petition.

Mary Griffin, State Representative, formerly lived on Tara Farm which is now Griffin Park: Believes the land owner has the right to develop their property after owning it for 20 years and paying taxes, we need a suitable tax base for the future of Windham, the recent revalue in the property assessment has resulted in a huge tax increase especially for the elderly who are on a limited income, the high school will cost \$60,000,000 without staffing, there is an education funding crisis, we are known as a wealthy community that does not have a need for educational assistance, the development would be beneficial, exclusionary zoning will keep us a bedroom community and the taxes will escalate, the applicant has offered to work with Town, the Board did a remarkable job with Shaws, and Griffin Park is beautiful.

Mr. LoChiatto read a letter from Police Chief Lewis dated January 10, 2007.

Public comment from Kevin Waterhouse, Haverhill Road, owner of a business in a Neighborhood Business zone, and a State Representative: Rt 111 traffic is not running very efficiently right now but it will be getting better, doesn't see the project impacting the traffic volume, spoke in favor for the commercial and light industry tax base, the tax base will help keep the elderly and young families in town, it is an ideal parcel for commercial development, he doesn't see that it will impact town services, and it would allow the land owners to have the highest and best use of their land.

Patrick Poore, Viau Road: This property was before the town last year for rezoning, there is drainage from the property that goes into the Cobbetts Ponds, Shaw's did not bring extra traffic but a Lowe's would, within 20 miles of Windham there are 16 lumber yards, a large retail business would add to the traffic, he read a portion of the Town's Master Plan regarding development, Police are at Wal-Mart all

the time, a big box retail will have a larger draw which will bring more traffic, and the water use is probably the same for a big box development as it is for an office building.

Chris Rosetti, 3 Mitchell Pond Road: Last year the same petition was on the Town Warrant and it was defeated, they should respect the Town's decision to not have big box retailers, we do not want the traffic, concerned with the environmental affect to the water supply and to Cobbetts Pond, concerned with the traffic, and there will be additional costs for roads, highways, and police; we have more than enough large businesses in neighboring communities, we should be careful not to rezone for an increase in property values, we could become a donor town by losing aid for our schools, the potential \$442,500 generated in taxes would equal an additional \$81 per household, would pay the \$81 rather than have the big box development, and encouraged the Board to not support this petition.

Kathleen DiFruscia, Horseshoe Road, and legal advisor to Cobbetts Pond Improvement Association (CPIA): The CPIA is opposed to the petition for the same reasons as a year ago, the Town voted a clear "no", there were statements in the Eagle Tribune that were disingenuous, keeping the current zoning does not stop the landowner from developing their property, there are at least a dozen uses, the current zoning is compatible with the Master Plan, the property owner can develop his property with the current zoning, the Master Plan says the best use of the land is the current zoning, the change could bring a big box retailer, the land is in the watershed of Cobbetts Pond, the development would bring impervious surfaces, the water quality is a grave concern, the developed site will bring pollutants brought to Cobbetts Pond, none of the petitioners live on Cobbetts Pond, Cobbetts Pond will also be affected by the Rt 93 expansion, asked the Board to not recommend the petition, there are many residents that use the pond, there are many places to shop, but there is only one Cobbetts Pond, and the voters have already given a resounding "no".

Tom Case, 70 Mt Village Road: Cobbetts Pond seems to have the biggest impact, he never heard the word "box store" in the applicant's presentation, Alan Carpenter hosted an economic development summit and the conclusion was the property should be commercial, the Planning Board rules for no detrimental runoff for sites, a decently designed site would be a asset, the Town needs commercial development, what other areas in Town could be developed commercially? Saturday morning traffic on Rt 111 is going to Salem for shopping, there are a lot of big box in neighboring towns and out of towners will go there and not to Windham.

Anthony DiFruscia, State Representative: He disagrees with the other State Representatives and does not support this petition, scare tactics are being used regarding the taxes, if Cobbetts Pond goes black the Town would loose \$50,000,000 or better, we don't owe something to someone who owns a piece of property for 20 years, this petition is driven by profit and greed, and he hopes the Board rejects it.

Charlie McMahon, 11 Floral Street, State Representative: Has fought for the protection of Cobbetts Pond, people will be forced out of Town without a massive tax increase because of the high school, he supports the rezoning, he believes that the Planning Board will do the right job, Rt 93 is expanding not because of Windham but because of those driving through our Town, we need a broader tax base, the voters go with what the Planning Board recommends, office parks are not being built in southern NH, education funding is a major problem for this Town, and he asked the Board to support the changing in the zoning.

Bob O'Loughlin, 17 North Shore Road: He was told the Master Plan was going to be the heart of the Town, this plan does not go along with the Master Plan, sewage doesn't travel far but surface

containments do travel; oil, trash, and salt will flow to the pond, the Master Plan says to protect the wetlands and this plan doesn't.

Bob Sweetser, 29 North Shore Road: There is a major difference between Shaws and this property because Shaw's is not in the Cobbetts Pond watershed and this property is, everything from this parcel ends up in the three main feeder brooks for the Pond, the applicant learned from last year not to identify the name of the business, Mr. Baker was chosen to get things done, the land hasn't been developed because the owner knows it's worth more as commercial property, the owner has been patient with the changes of Rt 93, the property is on the main feeder brook to Cobbetts Pond, there has never been a comprehensive study for development within watershed, and there will be problems with runoff the next 6 years because of Rt 93 changes.

Mrs. Griffin: She was told that there would be no runoff into Cobbetts Pond, and does not want to damage Cobbetts Pond.

Leo Scanlon, 72 Turtle Rock Road, CPIA: The Mother's Day floods will happen again and scientific drainage methods will not help, and he is against the proposal.

Richard Coakley, 70 Turtle Rock Road, President of the CPIA: The CPIA has requested a five year plan from the State Environmental Services, we have taken positive action, and things are moving along faster than the environment of the Pond can handle.

Unidentified resident: There are other properties that could be developed, why create another area, generate revenues in other areas of the town, rather than create a problem that can't be corrected once it exists.

Board discussion: Mr. LoChiatto read the citizen petition. If the rezoning is granted then what about the next parcel? then we will have a commercial park, we would like a business park, the parcel has not been developed because 93 and 111 have been on the board for changes, there are office buildings being built in southern NH, Pandora's Box will be opened once this parcel is rezoned, not in support of the citizen petition, the Gateway District is available for commercial development, the land owner's rights to develop their land have not been taken away, we need to see Rt 111 built first, higher retail taxes brings higher residential property taxes, the services to support the development takes away from the tax benefit, no matter the zoning there will be issues for Cobbetts Pond, the Board's hands could be tied once the zoning changes, a Commercial A could bring big box development, the Town spoke last year with a vote of "no", there are many unknowns with the zoning change, will there be an anchor store?, the Master Plan supports local independent businesses and we are not sure what will be built on this parcel, there are concerns about drainage, it is not in the keeping of the Master Plan, concerned about the impact to Cobbetts Pond, Rt 111 traffic is a concern, surface contaminants is a concern, not in support of the petition, the amount of surface parking will be the same for both types of zoning, Mr. LoChiatto stated he would support the zoning change, the Board should reach out to the land owner to work with the Planning Board regarding developing the property, and many uses are allowed with the current zoning.

Mr. Kolodziej motioned to not recommend Citizen Petition #1 because the amendment would not benefit the health, safety, or welfare of the community and it is not consistent with the Master Plan or other guiding documents. Mr. McLeod seconded. Passed 6-1. Mr. LoChiatto opposed.

Petition #2 by Carol Pynn and others to see if the Town of Windham will amend the zoning ordinance to adopt a Demolition Delay Ordinance that would delay demolition for thirty (30) days of any building or structure built prior to 1940. This will allow time to survey the property for historic significance.

The purpose of this citizen zoning petition is to require a 30-day demolition permit issuance delay to allow the Historic District/Heritage Commission to review the building to be demolished for historic significance, and if the building cannot be saved, then to take measurements and pictures for posterity.

Carol Pynn, Cobbetts Pond Road: She reviewed Attorney Campbell's concerns, and responded that the Historic District Commission compiles the historic list, a property owner doesn't have to meet with the Commission, the document has been in the working since last April, she would like the Board's approval, and would like to work with Attorney Campbell and Mr. Turner between now and the deliberative session. Board discussion: The petition cannot be changed from the legal posting. Ms. Pynn: Would like to go forward with the Board's approval. Mr. Turner: Attorney's Campbell recommends to not recommend the petition at this time, and Ms. Pynn should work with the Board and staff. Board discussion with Ms. Pynn: Should it be a zoning ordinance? should it be in the Historic District Ordinance? Ms. Pynn stated she answered all of Attorney Campbell's concerns. Board discussion: The ordinance is lacking a purpose, the "Commission" is not identified as the Historic District Commission, the dates in the document are arbitrary and capricious, and the ordinance is well intended.

Public comment from Jack Gattinella, Golden Brook Road: The way it is written it can't be a part of the zoning ordinance, there's no paragraph number, the Historic District Ordinance section says "see other document", the ordinance has no standing, and the historic resource list is self serving.

Ms. Pynn: This process has made everyone aware that it's something we want to do but may have to wait till next year, she's trying to preserve the history, one of the charges by RSA is to inventory old homes and stone structures. Board discussion: Ms. Pynn should come back to the Board in August and also work with Mr. Turner, and can citizen's petitions can't be changed at this time?

Mr. Case: To document the historic buildings is important, he volunteered to take pictures of the buildings with the owner's permission. Ms. Pynn: Stated that one of the Commission members is taking pictures.

Steve Christensen, Hardwood Road: He is concerned that this is rejected for this year but will be asking the voters to accept for next year, and is there a way to signal the voters that the Board is not against the intent.

Mr. Kolodziej motioned to move Citizen Petition #2 to Town Warrant as not recommended by the Board. Mr. McLeod seconded. Passed 7-0.

Petition #3 by Jim Finn and others to request that the Zoning ordinance for the Town of Windham be amended under 702.7 to read: Any nonconforming lot legally established by recorded deed or plan may be built upon and occupied for any permitted use if it complies with the minimum dimensional requirements of the zoning ordinance in effect, if any, at the time of the recording of the deed or plan and if the lot was in separate ownership from all contiguous lot or lots at the time of the original passage of this section on March 13, 2007. Where any nonconforming contiguous lot or lots were held in common ownership on or after March 13, 2007, they shall not be sold, consolidated or transferred to eliminate the common ownership unless they are sold, consolidated or transferred so as to create a

conforming lot or lots where possible, or if not possible, another nonconforming lot but to a lesser extent than the first lot.

Mr. Turner: Stated that this petition was to allow the Town to merge any non-conforming lots that are contiguous and owned by the same owners, Attorney Campbell says this petition needs a lot of work and the Board should not recommend it.

Public comment from Mr. Case: This is trying to amend a section that does not exist in the ordinance.

Mr. Kolodziej motioned to not recommend Citizen Petition #3. Mr. McLeod seconded. Passed 7-0.

Proposed Map Amendments:

Amendment # 1: Amend Zoning District Map by rezoning lots 11-A-450, 11-A-451, 11-A-452 located on Hardwood Road from Rural to Village Center District.

Mr. Turner read the amendment, this is proposed by the Planning Board, he showed the locations on a map, a residential use is not a good use for the home at the intersection, this amendment allows options for circulation and to minimize curb cuts on Indian Rock Road. Board discussion: All three lots have houses on them, and there are homes on the lots across the street on Hardwood Road. Mr. Turner showed an aerial photo of the area.

Public comment from Tom Case: He is concern with any detrimental effects to the three homeowners, the Village Center District has different setbacks, and the VCD has a 50' setback from Indian Rock Road not Hardwood Road.

Mr. Christensen, Hardwood Road: Identified his home on the map, he stated that this seems the best option, but is concerned about his neighbors, he loses a buffer, but overall it will be best to change, and he thanked the Board for their serious consideration.

Board discussion: Supports the Eastwood Road connection, the more connections the better to the Village Center District, and this item should be a Board workshop topic quickly so it is included in the vision of the overall Village Center District.

Mr. Kolodziej motioned to move Amendment #1 to Town Warrant and with Board recommendation that the amendment will benefit the health, safety, and general welfare of the community and is consistent with the Master Plan and other guiding documents. Mr. McLeod seconded. Board discussion: Concerned with the layout and landing area for Hardwood Road, and it will be looked at closely during the hearing process. Passed 7-0.

Amendment # 2: Amend Zoning District Map by rezoning lot 11-A-600 located on North Lowell Road which is currently zoned Village Center District, Rural, and Residential B to entirely Village Center District.

Mr. Turner read the amendment, maps of the lots were distributed to the Board, the lot is adjacent to the Village Center District on North Lowell road, over 50% of the lot is Village Center District, another portion is rural, and the back part is Residential B.

George Higgins, Representing the Presbyterian Church: Stated the Church would like the property to be zoned Village Center District, and it would be beneficial to the Town. Mr. Case: Stated he was in favor of the amendment. Board discussion: The change makes sense.

Mr. Kolodziej motioned to forward Amendment #2 to Town Warrant with the Boards recommendation as it will benefit the health, safety, and general welfare of the community and it is consistent with the Master Plan and other guiding documents. Mr. McLeod seconded. Board discussion: What is the benefit of the change? Mr. Turner showed an easement on the property which is currently a part of the church's property, he discussed the adjacent property uses, the pastor resides on the property, it appears to be the best use of land, the other rural lands in this area have been rezoned and this seems like spot zoning, and the lot was once two lots. Passed 7-0.

Proposed Ordinance Amendments:

Amendment #3: Amend Definitions:

Mr. Turner stated that Mr. Gattinella and Mr. Case reviewed the amendments and have given him their comments, Section 200 of the Zoning Ordinance under Definitions reads "the word 'building' includes the word 'structure,' the word 'lot' includes the word 'plot,' and the word 'land' includes the words 'marsh' and 'water.'", therefore our ordinance already identifies structures as buildings. Mr. Turner read each amendment and gave his recommendation.

(#1) Amend Section 200: Structure by deleting all the words after structure and replacing them with the following: "As defined by the Town of Windham adopted building code." Mr. Turner stated that this is still valid.

(#2) Amend Section 200 Definitions: Accessory Building or Use by adding the words "or structures" after the word "building" wherever it appears. Mr. Turner stated that this is still valid.

(#3) Amend Section 200: Definitions: Yard by deleting the word "building" wherever is appears and inserting the word "structure." Mr. Turner stated that this is not needed and should be stricken.

(#4) Amend Section 200: Definitions: Yard Front by deleting the word "building" wherever is appears and inserting the word "structure." Mr. Turner stated that this is not needed and should be stricken.

(#5) Amend Section 200: Definitions: Yard Rear by deleting the word "building" wherever is appears and inserting the word "structure." Mr. Turner stated that this is not needed and should be stricken.

(#6) Amend Section 200: Definitions: Yard Side by deleting the word "building" wherever is appears and inserting the word "structure." Mr. Turner stated that this is not needed and should be stricken.

Board discussion: A building you get inside of and a structure could be a flag pole or fence, etc, and the words are interchangeable in the ordinance.

(#7) Amend Accessory Building and Swimming Pools. Amend Section 701.1 and 703 by deleting the word "building" and inserting the word "structure." Mr. Turner stated that this is appropriate.

(#8) Amend Area Frontage Area and Floor Area Requirements. Amend Section 702 and 702.3 by inserting the words "or structures" after the word building in two places. Mr. Turner stated that this is still valid.

(#9) Amend the Wetland and Watershed Protection District. Amend Section 601.4.9 by inserting the words “and structures” after the word “buildings.” Mr. Turner stated that this is still consistent.

(#10) Amend Section 702.1 by adding the following words after the word walls: “signs, light poles, flag pole, mail boxes, driveways, stonewalls, retaining walls, walkways, essential utilities, waste disposal facilities, cisterns for emergency water supply ...” Mr. Turner stated that this is for items that don’t have to meet the setback requirements.

(#11) Amend Section 702.1 by deleting the words after “into” and adding the following words “or be permitted within the specified yards and provided that.” Mr. Turner stated that this clears this section up.

Board discussion: Should we keep the amendments for 701.1 and 703? Let the purpose of Section 200 stand, and to amend the section that says swimming pools.

Mr. Gattinella: For Section 702.1, something should be after the words “provided that”.

Board discussion: Regarding #11 Section 702.1 get rid of “and provided that” and it reads the same, not sure that it does that, a colon would solve the problem, Section 702.1 is a stand alone paragraph, and to delete and bring it back next year.

Jim Tierney, Lowell Road: Questioned about the building code in that the State is going to be adopting the 2006 building code, and it should be the state adopted code. Board discussion: What building codes have been adopted and when, and will need to look at this next year.

Board discussion: Mr. LoChiatto reviewed the changes as proposed by Mr. Turner, why are flagpoles and light poles includes in #10, waste disposal should be septic systems, get rid of #10, without it all mailboxes will need a 50’ setback, what is allowed in the 50’ front yard setback, keep #11, and take flagpoles out of #10.

Mr. Case: The purpose of the setbacks is to locate a house on a lot, if not changing word building to structure then you don’t need the exemptions, and it’s very confusing.

Mr. Tierney: Concern that #10 is includes with signs, why are signs included if there’s a sign ordinance.

Board discussion: The sign ordinance can prevail.

Mr. Carpenter motioned to recommend for approval Amendment #3 as written with the following exceptions: delete paragraphs # 2, 3, 4, 5, 6, and 7; amending paragraph 10 as follows: deleting the words “signs” and “flagpole” and replacing the words “waste disposal facilities” with “septic systems” and amending paragraph 11 by replacing the period at the end of the sentence with a colon. Mr. McLeod seconded. Passed 7-0.

Mr. Case: Can’t make changes at the second public hearing, if changes are made you need a third public hearing. Board discussion: More restrictive words needs a public hearing, and less restrictive wording does not.

Amendment #4: Amend Elderly Housing Ordinance Section 610 by the following:

Mr. Turner read the amendment.

Amend the name of the Ordinance to “Age-Restricted Housing” and all internal references.

Amend Section 610.6.1.10 by deleting all the words in this section and replacing them with the following “All units shall be constructed with architectural barrier free doors widths, door opening widths and extra studding and blocking in all bathrooms walls to allow the future installation grip or hand rails.”

Amend Section 610.6.2.3 by deleting this section. (*Note: Barrier free design features are required by Section 610.6.1.10.*)

Board discussion: Attorney Campbell’s has comments, every unit to be barrier free is going to be a huge problem, this amendment will make the units more expensive, items that included are door widths, door opening widths, and extra studding in the bath, should not be required in all units, this is not for affordable housing, this is for age-restricted (55+) not the elderly.

Mr. Gattinella: Has a problem with how the ordinance was wording, the way it is written it is only changing the title, the words “age restricted” has not been defined, and has anyone tried to fold the words into the document?

Board discussion: The words “internal reference” let the words “elderly” change to “age restricted,” it’s a politically correct name, delete the amendment at this time, there are typographical errors in Section 610.6.1.10, the density will change with the percentage of barrier free units, and 10% of the units being barrier free is a federal requirement.

Ms. Skinner motioned to delete Amendment #4 in its entirety. Mr. Kolodziej seconded. Board discussion: Whether or not everything should be deleted. Passed 4-3. Mr. Carpenter, Mr. McLeod and Ms. Post opposed.

Amendment #5: Amend Section 606.1 Uses Allowed in the Limited Industrial District by adding a new Section 606.1.13 Health, Fitness, and Recreational Establishments with primarily indoor facilities.

Mr. Turner read the amendment, this would be added to the end of the allowed uses.

Mr. Gattinella: He does not like the word “primarily” because it is subjective, say “inside” if you mean “inside”, and another Board could interpret it differently than it is intended.

Board discussion: It is meant to be mostly indoors but can accommodate something like an outdoor pool, and people know what the word “primarily” means.

Mr. McLeod motioned to move Amendment #5 forward to Town Warrant. Ms. Post seconded. Passed 7-0.

Mr. McLeod motioned to adjourn. Mr. Kolodziej seconded. Passed 7-0. Meeting adjourned at 11:25 pm.

These minutes are in draft form and have not yet been reviewed and approved.
Respectfully submitted, Nancy Charland