



*OLD VALUES - NEW HORIZONS*  
**COMMUNITY DEVELOPMENT**

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**Planning Board Minutes 9/29/10**

**Roll Call Planning Board:**

Phil LoChiatto, Chairman - Present	Rick Okerman, Member - Present
Nancy Prendergast - Vice Chair- Present	Ruth-Ellen Post, Member - Excused
Kristi St. Laurent, Member -Present	Sy Wrenn, Alternate - Excused
Pam Skinner, Member - Present	Bruce Breton, Selectman Member - Present
Louis Hersch, Alternate - Excused	Lee Maloney - Alternate - Present
Bruce Richardson - Alternate -Present	Ross McLeod, Selectmen Alternate Member - Excused

**Staff:**

Laura Scott, Community Development Director - Present  
Elizabeth Wood, Community Planner - Present  
Tracey Mulder, Planning Assistant - Present

Mr. Richardson is seated for Ms. Post. Lee Maloney is seated for Vice Chair Nancy Prendergast who arrived late and was not seated.

**Call to Order/Attendance/Pledge of Allegiance.**

Chair LoChiatto lead the Pledge of Allegiance at 7:00PM.

**Public Hearings:**

**Case#2010-28 Amendment to an Existing Subdivision Approval/Lots 20-D-3011, 20-D-3012, & 20-D-3014**

Ms. Maloney read the hearing into the record.

A Subdivision Application has been submitted for a modification of an existing subdivision, located on 25, 38, & 40 Burnham Road (Lots 20-D-3011, 20-D-3012, & 20-D-3014), zoned Rural. The applicant, Peter Zohdi of Edward N. Herbert Associates on behalf of the owner, EJR Jr. Dev. LLC. is proposing to construct a temporary hammerhead on Lot 20-D-3012 rather than build the approved temporary cul-de-sac on Lots 20-D-3011, 20-D-3012, and 20-D-3014 in the subdivision known as Johnny Hill Estates.

Mr. Peter Zohdi, of Edward Herbert and Associates, addressed the Board and explained the rationale behind the proposal of the hammerhead style turnaround at the northwesterly end of Burnham Road is in lieu of a previously platted and approved temporary cul-de-sac at the same location. Mr. Zohdi explained that he went before the TRC and the TRC members did not have any problem with the hammerhead style turnaround and Mr. Everett Ryan already has a bond in place for the road.

Chair LoChiatto asked Mr. Zohdi if the portion from Bennington Road to the proposed hammerhead has been constructed. Mr. Zohdi said that construction has begun and drainage and catch basins are in installed and within 30 days the road will be paved. In addition, Chair LoChiatto asked Mr. Zohdi if the existing temporary easement will be removed and Mr. Zohdi said that it will not be removed until the road connectivity takes place and this will be noted on the plans.

Mr. LoChiatto opened the hearing to the public and hearing no public comment closed to the public.

**Motion by Mr. Richardson to approve case 2010-28, which is an amendment to the existing subdivision 25, 38 & 40 Burnham Road. Lots 20-D-3011, 20-D-3012, and 20-D-3014 replacing the temporary cul-de-sac with a temporary hammerhead style turn around with the condition that a note be added on the plans to not remove the temporary easement to the cul-de-sac as approved until such time that the road is connected to London Bridge Road. Second by Mr. Breton. Motion passed 7-0.**

**Case #2010-23 Subdivision Application/82 Turtle Rock Road (Lot 21-K-18)**

Ms. Maloney read the case into the record.

A Subdivision Application has been submitted by Meisner Brem Corporation, on behalf of the applicants Susan and Charles Dalton. The applicant is proposing to subdivide 82 Turtle Rock Road, Lot 21-K-18, zoned Residential A, into two lots.

Ms. Wood addressed the Board noting that the applicant has submitted a hydrological study as part of the Cobbetts Pond Watershed Overlay Protection District and the applicant has received the necessary Variances. In addition, Ms. Wood noted the applicant submitted a letter requesting a waiver from Windham Subdivision Regulations Section 701.1.2 not to submit a drainage plan and from Section 701.1.4 not to submit a copy of drainage design calculations. The reason the applicant is requesting the waiver is primarily due to the fact that the proposed construction does not include the addition of any new roadways or any proposed grading that would significantly alter the existing stormwater paths. In addition, the size of the new lot and the construction of a single family dwelling will not be detrimental to the environment in regard to stormwater management or control.

**Motion by Mr. Breton to accept application Case #2010-23 for 82 Turtle Rock Road, Lot 21-K-18, for public hearing. Second by Ms. Maloney. Motion passed 7-0.**

Ms. Susan Dalton, 82 Turtle Rock Road, addressed the Board discussing the details of her application. She reiterated that she and her husband along with Meisner Brem have submitted a letter outlining their request and their application. They have already received approvals from the ZBA to reduce the street frontage and divide the lot.

Ms. Wood said that an abutter came in to the Community Development office and said that she would love to see a house across the street.

Chair LoChiatto questioned the applicant as to the exact location of the property and if she received a variance for the minimum lot size requirements and the applicant responded “Yes,” it is noted on the plans.

Ms. Maloney asked why the leaching field was in the back of the property and not in the front because she is concerned about runoff from the field. The applicant said that to the best of her knowledge, this is to provide a gravity feed system and to put distance between the septic system and the well.

Chair LoChiatto opened the hearing to the public and hearing no public comment closed to the public.

Chair LoChiatto read the memo from Meisner Brem, dated September 21, 2010 into the record noting the applicant is asking for a waiver from section 701.1.2 and 701.1.4 to not submit a copy of the drainage design.

Mr. Richardson asked how the applicant could know unequivocally that there will be no adverse drainage issues. Ms. Wood said that the Cobbetts Pond Ordinance triggers the applicant to submit a soil erosion report during the building permit stage and additionally, the Building Inspector would examine drainage at that point.

Ms. Wood read Sections 701.1.2 and 701.1.4 into the record.

**Motion by Mr. Breton to grant the waiver request from Sections 701.1.2 and 701.1.4 for the drainage study and calculations citing the letter from Meisner Brem and noting the applicant will be appearing before the Board regarding the Cobbetts Pond Watershed Protection Ordinance when they file for a building permit. Second by Mr. Richardson. Motion passed 7-0.**

**Motion by Mr. Breton to approve the subdivision application for case 2010-23, lot 21-K-18 with the conditions that the notes from the memo dated September 22, 2010, be added to the plan, including the date of the NHDES Subdivision approval, date the NHDOT driveway permit was issued, indicate the street address for lot 21-K-18 & proposed street address for lot 21-K-18-B on the lot diagram, and list the amount of the school impact fees and public safety impact fees. Second by Mr. Richardson. Motion passed 7-0.**

**2011 Town Meeting Workshop-** Public Input/Suggestions on changes to zoning ordinances.

Ms. Wood noted that an article was submitted to the Windham Independent requesting input and suggestions from the public regarding the zoning ordinance. The call for ideas was also posted on the Town website.

Mr. Joel Dube addressed the Board discussing section 701.3 of the Zoning Ordinance noting that he has issues with this section of the ordinance and believes it lends itself to conflicting interpretations where commercial antennas are permitted. Mr. Dube provided the Board solution in the ordinance that he thought would rectify issues:

1. Clarify the language within the zoning ordinances to include the following within each of the 7 commercially zoned areas in Town with the suggested wording to include telephone exchange buildings,

radio stations, television stations, commercial antenna structures, and other utility structures subject to the provisions in Section 701.3.

2. Clearly state within Section 701.3 precisely which commercially zoned areas commercial antenna structures are permitted and include the suggested wording noted above within the ordinance for each commercial zone.

Mr. Richardson asked Mr. Dube for a copy of his comments because he is part of a group working on commercial zoning in Town and will bring Mr. Dube's suggestions to his next meeting.

Mr. Dube asked how he can provide information to the Planning Board members in the future. Chairman LoChiatto state that they can be addressed to him as Chair. It was noted that Department staff should be copied on all correspondence to Board members since they are responsible for keeping copies of all material on file for public inspection.

Mr. Dubay asked if he has the option to forward his own citizens petition if the Planning Board does not move forward with his suggestions. Ms. Scott indicated that the time period for that is in December but she does not have the exact dates yet. They will be posted on the Town web site when available.

#### ***Section 602.1.6.2 Child Care***

Kimberlee Curtin, addressed the Board regarding the home based customary criteria and she is looking to open home care business. Ms. Scott noted that the home based occupation is based on the 25% rule where the home occupation use of the dwelling must not utilize more than 25% of the gross floor area. Ms. Curtin is confused about the difference between home occupation and childcare and will address the Board after she hears the Board discuss the revisions in the ordinance.

Ms. Scott said that the current language in the Zoning Ordinance contradicts state law and state licensing requirements. This conflict puts home based childcare in Windham at a disadvantage and it is confusing as to which set of regulations to follow. Ms. Scott reinforced the point that the town criteria is only a portion of what the applicant needs to meet in order to open and operate this type of business and the applicant still needs to meet the state licensing requirements, as well as annual building, fire, and public health inspections.

Ms. Scott outlined the reason behind the proposed changes in the ordinance as:

- Section numbers were incorrect in the current Ordinance
- Definitions of two types of Home Based Care were inconsistent with State definitions
- It was unclear what Customary Home Occupation criteria would apply
- Home-Based Day Care was not allowed in any other residential districts other than Rural.

In addition, Ms. Scott also noted that she incorporated some of the state requirements and language into the ordinance.

Ms. Curtin addressed the Board noting the requirements, as she understands them, and that the proposed changes fall in line with what the state is proposing.

Chair LoChiatto said he did not have issues with the proposed zoning changes except for allowing home based daycare in other residential districts besides Rural, as it is currently allowed. Mr. Richardson said it doesn't make sense to have a home based day care in a residentially zoned area with multifamily homes and since it is very unlikely to happen it does not make sense to have in the ordinance. Ms. Prendergast and Ms. Maloney agreed with Mr. Richardson's reasoning.

Mr. Ralph Valentine addressed the Board and said he would like to see the burden of proof on the applicant at the ZBA stage rather than the Planning Board if this type of business is proposed in other areas besides Rural. Mr. Valentine was concerned that if you allow one applicant relief and not another it will be difficult.

The Board's general consensus is to allow Home Based Day Care in Rural and Residential A but not in Residential Districts B and C, and to leave in the 25% criteria, which had been crossed out in the revision, and that all the other proposed changes were fine.

The Board felt that this was ready for public hearing and no other workshops would be necessary.

### **Public Input Session**

Mr. Joe Maynard addressed the Board regarding Section 906 Duration of Approval.

Ms. Scott said Mr. Maynard had contacted her about proposing draft language which would lengthen the time that a Variance was valid. Currently it is 1 year with no renewal provision. It is difficult for staff to tell an applicant that they have lost their Variance and have to start the process all over again. Mr. Maynard noted that because of the length of time it takes to get permits from the state it runs close to a year and the variance is set to expire. Mr. Breton said that he was on the ZBA and no one as he recalls, was ever denied an extension. Ms. Scott said that since there is no provision in the Ordinance for an extension, Staff must require those that have run out of time to apply as a new applicant.

### *-Section 710 Fences*

Ms. Wood noted she worked with Mr. Okerman, the Building Inspector, the Code Enforcement Officer, and the Community Development Director to come up with this first draft for the Board to review. The proposal is to delete the current Section 710 and replace it with entirely new language. Ms. Wood noted that the draft proposal is intended to be easy for the public and the staff to understand and interpret and to address areas where the current ordinance is confusing.

Mr. Okerman noted that some of the wording in the ordinance needed clarification with respect to definitions. Mr. Okerman went through the proposed ordinance changes with the Board.

Mr. Jim Tierney addressed the Board and said there should be clarification as to what is the definition of a front yard and side yard. He also read some definitions from the international zoning ordinance, which is part of the 2009 Building Code.

The Board requested Ms. Wood to come back with diagrams of the various setbacks and fence transition so that it would be easier for the public to understand what is allowed.

Ms. Wood met with Fire and Police personnel and they both agreed they would like to make sure that fences are allowed to be erected between a fire hydrant or a cistern with a distance of at least 6 feet, nor shall a fence obstruct fire department access to water supply.

The Board wanted Ms. Wood and Mr. Okerman to work together to revise the fence ordinance based on the feedback received and schedule this for another workshop.

### ***Section 706 Signs***

Ms. Wood noted that the proposed sign ordinance revisions are based on input from Ms. Maloney, the Code Enforcement Administrator and the Community Development Director.

The draft proposal is intended to be easy for the public and staff to understand and interpret, address areas that are confusing to the general public, easier to enforce by staff, and address areas not currently covered by the existing ordinance. Ms. Wood reviewed her memo and identified the most significant changes she is proposing to the sign ordinance. In addition, Ms. Wood reviewed additional points for discussion with the Board, which were not included in the proposed ordinance but should be discussed by the Board, as well as identified areas that need additional clarification.

Ms. Wood explained why she made the proposed changes to the ordinance and the rationale behind many of the changes.

Mr. Tierney addressed the Board stating that he liked the changes made but would like to add a section titled "Signs allowed without a permit" that includes the open signs, sandwich board signs, real estate signs, etc.

Chair LoChiatto asked about the window signs and Ms. Wood said she was trying to provide businesses with options. The Board discussed window signs and what types of signs a business would put in their window.

Ms. Scott said the reason this is brought before the Board is because she has had numerous complaints from citizens about signage in windows and the current ordinance is unclear. The Board needs to be specific as to what types of signage they want in the community, where, and how much of it. At the moment, because the ordinance is either unclear or silent on some of these issues she directs staff not to do code enforcement unless it is a flagrant violation. As Community Development Director she wants to help businesses succeed and needs to be able to have clear regulations to accomplish this goal.

Mr. Valentine addressed the Board and commented on sign changes from a commercial landowner's point of view. The Board had additional discussion regarding change of use and how the signage would be affected with a new tenant in an existing site. Mr. Valentine suggested that several items could be addressed by staff administratively and staff can direct them to the Planning Board if necessary but the applicant should not be required to automatically come before the Planning Board for a change of use for a sign.

The Board discussed why the new construction of a free standing sign should come before the Planning Board for design review as part of their site plan. Planning Boards review of these types of signs gives the Board discretion to review a sign's appearance and ensure public safety.

The Board directed Ms. Wood to continue to work with Ms. Maloney on the sign ordinance, make revisions based on the discussion tonight, and schedule this for another workshop.

## **Financial Release**

### **Squire Armour Road Extension**

Ms. Scott noted that in their packet is a memo dated 9/24/10. The Town has been holding onto funds for this development quite some time. There are not enough funds in the financial guarantee to complete the road and we do not have a road deed. Ms. Scott received a fax from the applicants lawyer and the applicant is willing to turn over the financial guarantee to the Town and provide the Town with a deed. Due to the financial issues that the applicant is having, Ms. Scott encouraged the Board to make a recommendation to the Board of Selectman to accept this offer (accept the financial guarantee and road deed) and finish the work ourselves, rather than spend legal fees and possibly end up in the same place a year from now. Ms. Scott does not think it is a viable option for the Town to get money knowing the financial status of the developer.

**Motion by Mr. Richardson to recommend to the Board of Selectman that the town accept the offer outlined in September 24, 2010 memo from Attorney John Mason and retain the funds in the road financial guarantee and escrow accounts to complete the punch list from KNA dated September 17, 2010 and to encourage the Selectman to do the work on the punchlist as soon as possible. Second by Ms. Maloney. Motion passed 6-0-1, Mr. Breton abstained.**

Motion to waive by laws to hear business after 10pm by Ms. Skinner. Second by Ms. Maloney. Motion passed 7-0.

## **Meeting Minutes Review and Approve**

Mr. Richardson motioned to approve the minutes for September 15, 2010 as written. Second by Ms. Skinner. Motion passed 6-0-1. Ms. Maloney abstained.

## **Planner's Report**

Ms. Wood provided the Board with her Planner's report.

## **Adjournment**

**Motion by Mr. Breton to adjourn at 11:00. Second by Mr. Richardson. Motion passed 7-0.**

**These minutes are respectfully submitted in draft by Tracey Mulder.**