

Town of Farmington
Planning Board Meeting Minutes
Tuesday, October 17, 2017

Board Members Present:

David Kestner, Chairman
Martin Laferte, Vice Chairman
Bill Fisher
Sylvia Arcouette
Stephen Henry
Richard Pelkey
Jim Horgan, Selectmen's Rep.
Matt Stormann, Alternate
Brandy Sanger, Alternate

Others Present:

Dan DeSantis, Town Planner
Elise Haig

BUSINESS BEFORE THE BOARD:

Call to Order:

Chairman Kestner called the meeting to order at 6 p.m.

Pledge of Allegiance:

All present stood for the Pledge of Allegiance.

Review of Minutes:

October 3, 2017- No errors or omissions

Motion: (Fisher, second Arcouette) to approve the minutes as written passed 8-0-1 (Pelkey abstained).

Follow-up on Form Based Codes (FBC) Presentation:

Chairman Kestner asked if anyone had any questions/comments regarding the Form Based Codes booklet distributed to the members at the previous meeting.

Mr. Laferte expressed concern about a sentence at the top of page 11 that states that as an added benefit the need for review by a discretionary body such a Planning Commission or Design Review Board is often eliminated. He said he wondered if there would be a situation when an applicant seeking approval for something would be told the Planning Board doesn't need to be involved and to just deal with it through the FBC.

Mr. Kestner said that one could interpret that the Planning Board and the Building Inspector could be out of business based upon the information in the booklet if everyone involved played according to Form Based Coding.

Mr. Henry said the FBC system has more to do with the size and look of a building than what is being done inside it. He asked if theoretically they could manufacture cars or be an oil change facility inside a building downtown as long as the outside looks correct.

Mr. DeSantis said the downtown area has specific regulations that require an applicant to provide a description of the business similar to a business plan which is burdensome to the applicant. He said that he planned to present a proposal to eliminate this requirement at the next board meeting.

Mr. Kestner said light manufacturing is allowed downtown but oil change facilities are not.

Mr. Henry said he was trying to choose an extreme situation to demonstrate that FBC are more about what something looks like than what it is and that under this system the Town would dictate to developers what their property looks like to a much greater degree than is done now.

Mr. Pelkey asked when the form is decided if height restrictions could be made a part of the FBC.

Mr. DeSantis said minimum and maximum height restrictions as well as windows, signage and materials, etc. that are currently reviewed by the board could be part of the Form Based Codes.

Mr. Henry said the members have probably seen a McDonald's restaurant that doesn't look like a typical McDonald's and guessed that it was the subject of Form Based Codes. He said that the restaurant could not conform to their trademark designs and had to conform to someone else's designs.

Ms. Sanger said she thought that the townspeople are more concerned about what the business is versus what it looks like. She said the business could be in a bright yellow building if it is something they love but if they hate it forget about opening it. She added if the system were to change, there are a lot of community members who don't have pull who will lose that voice.

Mr. Henry said the residents don't have much of a voice anyway because even though they may say a lot they can't stop a legal business from opening just because they don't like it.

Ms. Sanger said as a Planning Board they have a voice. She cited a business that wanted to come to downtown and the board decided it wasn't coming downtown and that was it.

Mr. Kestner said if she was referring to the plan to open a smoke shop downtown that so many restrictions were placed on what could be sold there that the man gave up on the plan.

Mr. DeSantis said he found it odd that the town disapproves a business going in downtown without a plan stating what the town wants. It becomes arbitrary when "Joe Blow" says he doesn't want a smoke shop downtown so then we won't have it he said.

Mr. Kestner said that use is currently permitted with review under the existing zoning.

Ms. Sanger said the town does have a plan that is listed in the permitted uses.

Mr. Kestner agreed and said although it may not be "Form Based" there is plan for what is allowed for businesses downtown with somewhat generic items listed.

Mr. DeSantis said if the town wants to grow it must be a little more business friendly. He said that he didn't feel that the town is currently business friendly, is very restrictive and tends to be arbitrary.

Mr. Henry said the FBC is also restrictive and is just a different kind of restrictive. He said if the owner of the laundramat wants to paint the building florescent pink there are no regulations to say he can't do it. With FBC we could dictate what color that building could be he said.

Mr. DeSantis said that would be true if color requirements are a part of the Form Based Code in Farmington. The system is not all or nothing when it comes to the codes he said.

Mr. Laferte said the FBC talks about architectural requirements and that a developer would be told how the building will look or “get out of town”. He said the board has been accused of being anti-business and that for as long as he and Mr. Kestner have been on the board they have never been anti-business. If an applicant comes in with a proposal that makes sense it probably will get approved he said.

Mr. DeSantis said he was asked by the Board of Selectmen to review the Zoning Ordinances and the Site Plan Review regulations and find a way to simplify them because they are cumbersome. He said it is “absurd” that there is a long list of requirements to put a business downtown that apply only to the downtown area.

Ms. Arcouette said the FBC will eventually set the standards for the downtown but make it less difficult in the application to place a business downtown. In setting those standards, it will be the kind of downtown that the town wants she said.

Mr. Kestner asked if a barbershop/beauty salon would be allowed in the Village Center and if the uses would be shown as Permitted with Review (PR) or Permitted (P) on the Table under FBC.

Mr. DeSantis said the uses would be permitted but the issue is not what is permitted there but that the applicant has to provide a business description that is essentially a business plan. He then asked if we are competent enough to evaluate a business plan.

Mr. Kestner said he did not have a business degree but has a gut feeling as to what will or won’t work. He said most of the time a business has a business plan anyway to try to stay in operation and to try to make money.

Ms. Sanger asked why any business would want to go through the process and not have a plan. She said if she were to open a business she would have a plan and didn’t understand why it is such a big issue.

Mr. DeSantis said that the issue is to have to present the plan to the Planning Board for review and approval.

Mr. Kestner said this allows the public to speak about a proposal at a public meeting and asked if the FBC system would allow the public an opportunity to speak for or against a business in the Village Center.

Mr. DeSantis said they would have the same opportunity they would have anywhere else. There was a hearing on the Metal Farm and no one came to oppose it he said.

Mr. Kestner said that business is not in the Village Center.

Mr. DeSantis asked why it is so important for the board to approve a business seeking to go into the Village Center. He said he would argue that it is because the Village Center is important to the Town.

Ms. Sanger said residents wish to keep the community feeling and do not want a strip club there. She said if the building meets the historic facade and they don’t have to present a plan then they could bring anything in.

Mr. DeSantis replied that there are now baby carriages on the sidewalk because there are apartments on the first floor of some buildings.

Mr. Fisher said the board doesn’t approve business plans but tries to make sure that the business

coming in fits the Table of Permitted Uses for that zone. He said with FBC the board would still be concerned that the business fits the permitted uses but not be concerned with the number of employees, hours of operation, etc. and would give the business some parameters as to what it can look like.

Mr. DeSantis said the town could also have a hybrid form of Form Based Codes that includes some of the existing standards.

Mr. Kestner said they will care about the clutter in downtown when it comes to parking as there are a finite number of parking spaces available. One strip club will take care of that quickly he said.

He said Keno is also coming to NH and the issue needs to be reviewed because some restaurants may apply for Keno operations. This could also potentially involve additional restaurants and bars opening up in the downtown area. He said one of the board's biggest concerns has been the limited parking downtown but they have not shut anything down there.

Ms. Arcouette said she thought the FBC could work downtown if there was a compromise between the old and the new by taking the FBC "square" and adding the permitted uses and set some restrictions on appearances.

Mr. Kestner said the board has always had the ability to waive any issues within the Site Plan Review regulations but the applicant needs to ask for it.

Mr. Henry said whether or not the system would make things easier for the applicant depends on what is adopted for Form Based Codes and the Town could "shoot themselves in the foot" by going too far. He said there could be a situation where a property sits there unimproved because the owner had planned to spend a certain amount to fix it up a little but it won't match the Form Based Codes requirements unless he spends a lot more money so he decides to leave it ugly.

Mr. DeSantis said the newest improvement downtown is the former Masonic Building (now owned by Friends of Farmington) and it is an excellent example of Form Based Codes. He said the new owners didn't apply new materials or change the windows and kept the original form of the building which is what Form Based Codes asks.

Mr. Henry said the Masonic Hall fit the mold already and there was nothing that had to be done to conform to what he suspects the town's Form Based Codes would be.

Mr. DeSantis said they could have changed the windows, materials used or anything and that we would not have a lot to say about it.

Mr. Henry said the blue building that currently houses the barbershop doesn't match what he suspects they would legislate for Form Based Codes.

Mr. DeSantis said if a developer wanted to buy the building, tear it down and put in a new building that is when he would be asked to match the rest of the downtown. The Town can compel the new building to meet codes and this is what is done now he said.

Mr. Pelkey said he feels that the community is not happy with the way the downtown is now and would like to see it improved but did not know how we would get there without saying what we want it to look like. He said he did not think FBC is exclusive to the Planning Board or to having permitted uses and didn't think we should ever give away the right to control permitted uses.

Mr. Laferte asked if the town would tell a developer what he has to have for a façade, windows, doors, etc. and if it doesn't have all of this he can't do it.

Mr. DeSantis said that is what is done now as there are currently front and side yard, road frontage and driveway requirements. We do it now in another way he said.

Mr. Laferte said the town does do that with land but not with buildings.

Mr. DeSantis asked if there was an empty parcel if he would permit anything to go in there.

Mr. Laferte said he would favor anything within reason.

Mr. DeSantis asked what his definition of "reason" is. He said the Dollar Store wanted to put a one story Dollar Store at the old Fire Station site and asked Mr. Laferte if this is what he wants to see there.

Mr. Laferte then asked if the Farmington Planning Board should change its name to the Farmington Architectural Board.

Mr. Henry said he is a private sector/private property/private capital guy but there are certain things the town owns and is responsible for like sidewalks and public infrastructure. He said before he would be comfortable telling private property owners what they need to do, the town has its job to do first and make improvements to those things to help attract customers to those businesses.

Mr. Laferte said he brought up the issue of dirty and inconsistently constructed sidewalks several months ago and that the Town needs to do something about it. He said he was told it is a money issue keeping the sidewalks from being improved.

Mr. Fisher said it takes money to improve the sidewalks and the only way to get it is to raise taxes and people don't want their taxes to go up.

Mr. Henry said it is not so much a need to increase taxes but a change in priority as to where the tax money is spent.

Mr. Kestner said the Town can apply through the DPW or the Town Planner for grant money for infrastructure improvements but there may be a need for matching funds from the Town. He said the town's portion of the tax rate has gone down and it is the school district portion that is out of control. The taxpayers can only handle so much before they revolt he said.

Mr. Henry said the same could be said for property owners and developers as they will only pay so much because they have to have a return on their investment.

Mr. DeSantis said the developers are not going to invest in a slum. If the street was improved, the utilities were put underground and better lighting, curbing and streetscapes were installed it would show the private sector we are serious he said.

Mr. Kestner said he needs to also keep in the mind the geographic economics for this town and that the average income per the Master Plan is only about \$38,000. The reality is we are an economically poor town he said.

Mr. DeSantis said his father use to tell him that just because you are poor that doesn't mean you can't be clean.

Mr. Henry said he was not as opposed to the concept as he was at the last meeting but that he wanted to be cognizant of any unintended consequences as the board moves forward with this

issue and that it may have to evolve in baby steps over decades.

Mr. Kestner asked the board how they wished to move forward with the discussion on the Form Based Codes booklet.

Mr. Horgan suggested the members continue to read the booklet at their own pace and discuss it when the opportunity arises at future meetings and as the conversation develops they may be able to put together a better picture of what they want the downtown to look like.

He advised not to confuse that the board is anti-business because the regulations are overly restrictive and could be eased up on. He said the FBC will affect the entire town and the restrictions are not going to be eliminated but reorganized and applied through a different approach.

Mr. Laferte suggested the agenda item "Follow-up on Form Based Codes Presentation" be placed at the end of each meeting agenda to allow the board to take up the matter if anyone wished to discuss it.

Mr. Kestner suggested that in order to facilitate the discussion everyone get a reading assignment of one or two chapters similar to what was done with the Master Plan and to address any concerns they may have based upon a certain chapter at the next meeting. He also suggested when the members finish reading the booklet that they try role playing as an applicant to see how the system would actually work.

Ms. Sanger suggested they begin by reading Steps 1 and 2 and come prepared with any questions they have about them to the next meeting.

Mr. Kestner asked to note for the record that board members are asked to read Step 1 and 2 for the next workshop meeting on Nov. 7.

Motion: (Laferte, second Kestner) to take a five minute recess passed unanimously at 7 p.m. The meeting reconvened at 7:15 p.m.

Ms. Sanger left the meeting at 7:15.

Proposed Changes to Zoning Ordinance - Section 2.05 Residential Occupancy in VC

District:

Mr. DeSantis provided a proposed the following be added to Zoning Ordinance Section 2.05-(B) (1) "The use of the first floor (store front) of any building in the Village Center (VC) District for residential occupancy shall be prohibited."

He noted that proposed changes to zoning ordinances must be submitted by December 13, 2017 for the 2018 Town Meeting giving the board approx. one month to consider the proposal.

Mr. Henry said these are private buildings on private property in a zone where residential use is allowed. He said it is "heavy handed" for the government to tell you can live here but not here because we don't like the way it looks on property they invested in and pay taxes on.

Mr. Kestner said he did not disagree but whether this is a positive or a negative is a decision for voters at Town Meeting. He asked if the board agreed with where Mr. DeSantis is proposing to put this addition in the zoning ordinance and if there are other places in the ordinances where this proposed amendment should also be added.

Mr. Horgan said the Village Center is defined as running from the Main Street Bridge to the

other side of the Town Hall on Main Street and from Main Street out to the Central Street Bridge and asked how many buildings would be impacted by the proposal. He said the geographic area affected by the proposal needs to be defined as it pertains to a segment of the downtown and not the entire Village Center. He said he favored grandfathering the existing 1st floor store front residences but would restrict adding store front residences in the VC.

Mr. Kestner asked if he was suggesting if the Village Center be divided into segments such as VC 1 and VC 2.

Mr. Horgan said when he drives down Rte. 153 there is a difference in esthetics where you know you are in the downtown. He said that within the downtown perimeter it should have a certain appearance.

Mr. Kestner said the same appearance goes out Central Street with historic homes that are being used as single and multi-family residences and in-home businesses and commercial properties up as far as the funeral home and to the schools on Spring Street.

Mr. Pelkey suggested that they define what a “store front” is as not all of the buildings in the VC would qualify as having a store front. If there was definition then they could have a discussion of the places where the restriction would apply he said.

Mr. Kestner said the store front definition would need to be added to the definitions section of the zoning ordinances.

Mr. Henry suggested that with this proposal a developer will ask himself if he should try the business as a store front and see how it does but knowing if it fails it can’t be reverted back to a residential property that it is now. He said the developer may not take that risk because there is no way to return to where he was and make him whole again.

Mr. DeSantis said the town has a larger vision of what it wants to be and that is determined at Town Meeting. We are not here to guarantee a return for a developer he said.

Mr. Pelkey said if we create a place where business can develop and thrive people are going to want to do that.

Mr., Henry said that part of a risk analysis is the exit strategy if the plan fails and this limits the exit strategy. He said any good business plan considers what could go wrong and what to do about it if it goes wrong.

Mr. Pelkey said a business will never move forward if the owner keeps one foot on either side of the door and never goes through it.

Mr. DeSantis said if the use is abandoned the new use has to comply with current zoning regulations and there is no going back in any zone in town.

Ms. Arcouette said in the downtown section as far as the Cumberland Farms store there is only 1 first floor apartment in the downtown area. She said she didn’t see that anyone would do that there because there are none there now but there are tons of first floor apartments as well as some in-home businesses outside the immediate downtown area.

Mr. Pelkey said if the building does not have a store front they would not be restricted from a first floor apartment under this proposal.

Mr. Kestner then asked Mr. DeSantis to provide the board with the definition of a store front,

define the Village Center area or come up with a category for the restricted area of the VC and the number of properties that may be impacted by the proposed change.

Mr. Horgan also suggested they consider the impact of the restriction on TIF and 79-e districts.

Mr. Kestner said if a TIF District were created for the VC the tax rate would be set at the current rate and tax revenues from any improvements thereafter get set aside to a specific goal such as streetscapes, lighting and advised the members to be careful of the TIF issue.

Mr. DeSantis asked if the store front was defined would that take care of the second requested item to define the VC area.

Mr. Kestner said the problem is that each of the members defined the VC as the Route 153/Main Street area when there is an additional wing that includes portions of Central Street.

Mr. DeSantis asked if the store front is defined would it apply to both wings of the Village Center.

Mr. Kestner expressed concern about creating “spot zoning” because if the downtown limits are not changed the store front issue will carry out to all the properties currently included in the Village Center.

Mr. DeSantis said it would only affect those properties that are a store front.

Mr. Kestner said the key issue is if they are currently first floor apartments and that as soon as you go beyond the funeral home there is a “nest” of apartment buildings.

Mr. Laferte said the Village Center goes out farther than some of the members think it does and asked if the restriction would include the whole Village Center or just a specific part of it.

Mr. Pelkey said he reviewed a map of the VC district before the meeting and said he had difficulty determining where the boundary is for the Central Street portion of the VC and how far back it goes off of each side of Rte. 153.

Mr. Pelkey said if possible pictures with examples of a store front may be helpful to the board.

Mr. Kestner asked if the proposal should also be included in the Table of Permitted Uses. He said various types of residential uses are permitted with review (PR) downtown but it doesn't say store front residential use is prohibited.

Members agreed if approved the restriction needs to added to the Table.

Table of Permitted Uses: Commercial and Industrial:

Mr. DeSantis proposed that motor vehicle repair (currently Permitted with Review-PR), sales (Commercial Business-PR, Industrial Business-Prohibited) and service (PR) facilities be prohibited in the Commercial and Industrial zones.

Mr. Fisher asked for the difference between a motor vehicle repair facility and a motor vehicle service facility. He said those 2 items appear to be inclusive of each other and asked why they are listed separately in the Table of Permitted Uses and why they should be prohibited in a commercial zone.

Mr. Kestner read the definitions of a motor vehicle repair facility (body work, painting, engine or structural repairs and alterations but don't include accessory sale of gasoline) and motor vehicle service facility (service, maintenance and minor repairs including the accessory sale of gasoline,

parts and supplies ex. Service station, muffler, transmission and brake shops, car washes and tune-up centers but don't include body work, painting, engine work or alterations).

Mr. Kestner said in the Commercial Business zone that currently all three types of facilities are PR and that Mr. DeSantis is proposing to prohibit all of them in that zone.

Mr. Horgan then requested that Mr. Kestner read the definition of a motor vehicle sales facility. The definition states that a sales facility includes the use of any building or land area for the display and sale of more than one new or used motor vehicle including autos, trucks, vans, trailers, recreational vehicles, motorcycles or similar motorized vehicles which may include repair facilities for such vehicles.

Mr. Henry said we all use cars and they need to be fixed or replaced from time to time and that Route 11 is an appropriate place to sell and fix cars. We are trying to bring business to town and to see all these restrictions based on a business we may not like is inappropriate he said.

Mr. Fisher said he couldn't see prohibiting a car service or repair facility in a Commercial district. They are good viable businesses that could bring a lot of customers to town he said.

Mr. Pelkey said he also did not like to prohibit certain types of businesses but the board may want to consider that a car dealership uses a lot of acreage in an area where we are trying to bring as many services to the town as possible.

Mr. Henry said one large user would not put as much load on the town systems as many small users.

Mr. Kestner said the only infrastructure there now is the town water line so any business operating there would need to install a septic system. He noted most of the soils in that area are suitable for septic systems with good sandy gravel soils.

Mr. Horgan said those soils are found on the east side of Rte. 11 and that west side contains mostly granite.

Mr. DeSantis asked about the large amount of asphalt used at a motor vehicle sales facility.

Mr. Henry said if the proposed change required a permeable surface or a certain percentage of permeable surfaces this would be a different conversation.

Mr. Kestner said a permeable pavement or asphalt issues could be addressed by the board during the Site Plan Review process. He added there is also water protection overlay in that district due to the Town wells located in the area.

Mr. Laferte said he would not have a problem with franchised motor vehicle dealerships coming to town as they are good uses with good quality buildings. He said he was more concerned about a used car lot with an office trailer, lots of flags and cars with the hoods up.

He added that the repair and service facilities are not a big deal and should be allowed.

Mr. Kestner said all three uses are permitted with review which means the Planning Board has the ability to determine site conditions there. He suggested the board may want to consider permeable pavement as part of the Site Plan Review provisions rather than completely prohibiting motor vehicle sales facilities along the Route 11 corridor.

Mr. Horgan said the last thing he wants to see is a mile of pavement along Rte. 11 but doesn't favor prohibiting any of these items. The Planning Board can deal with car sales lots he said.

Ms. Arcouette and Mr. Storrman agreed that none of these types of facilities should be prohibited in that area.

Mr. Kestner asked Mr. DeSantis what the overriding issue is with the proposal.

Mr. DeSantis expressed concerns about the flags, balloons, raised car hoods and all the “rah-rah” found at many car sales facilities and saw it as an opportunity to help guide the development of that area. He said the board has convinced him that the motor vehicle repair and service facilities are appropriate in the Commercial zone especially for franchisees that must follow certain rules.

Mr. Horgan suggested re-defining motor vehicle sales facilities.

Mr. Kestner asked if the board should consider restricting the temporary “signs” at sales facilities under Site Plan Review.

Mr. Henry said he does not drive by a sales facility and think they are “tacky”.

Mr. DeSantis said he was concerned about the sales facilities where a guy buys a 3 acre lot and puts 20 cars on display for sale. He said he would go along with whatever the board decides.

Ms. Arcouette asked if the term could be changed to motor vehicle dealership instead of sales facility where anyone could put a garage up and start selling a bunch of cars.

Members said if one type of vehicle sales facility is allowed there then all types of sales facilities must be allowed and trying to restrict it to dealerships only would probably bring lawsuits to town instead of businesses.

Mr. DeSantis said the sales facilities could be required to use permeable surfaces, be landscaped and other site requirements that would help with some these issues.

Mr. Fisher asked if the town would deny any other type of large facility that would use a lot of asphalt for a parking lot. He said if we are creating a business district there we are going to have asphalt and we can’t require permeable surfaces.

Mr. Henry noted the Town already requires surface water flow management.

Motion: (Laferte, second) that the definitions as they are written now remain the same.

The motion failed due to lack a second.

Mr. Kestner said the Site Plan Review regulations checklist has 25 items where the board has direct input on what happens on site in any area in town. He said that the Site Plan Review is where they need to “tweak” things to make it more palatable if they desire to do so.

He then said the motor vehicle sales facility is already prohibited in the Industrial Business zone and is a mute point and doesn’t need to be included in the discussion.

He asked if any of the members were in favor of making the changes to the Table of Permitted Uses in the Commercial Business zone as proposed by Mr. DeSantis.

There were no members in favor of the proposal.

Mr. Kestner said no motion was needed as the Table would be left as status quo or to terminate the discussion on the matter. He added the board may wish to take up the discussion as it pertains to possible changes to the Site Plan Review regulations at some future point in time.

Mr. Pelkey requested Site Plan Review requirements be put on a future agenda for discussion.

Mr. Kestner said the requirements can be changed at the board’s leisure and does not need Town Meeting approval. He said if for example if the board wished to consider requiring permeable

pavement under Parking Lot Design they could request the Planner take a look at the issue and any other related issues and provide the board with information for discussion.

Mr. Henry said if Mr. DeSantis received an application the next day and the Site Plan Review requirements were changed at the next board meeting that the applicant would be bound by the requirements in place at the time of submittal.

Mr. Kestner said that is correct and the board has the ability to recommend other ways to accomplish the goal of reducing pavement and still attract businesses.

Mr. DeSantis said the board may soon be looking at a proposal for a 10 acre site and noted that that is a lot of cars.

Mr. Kestner suggested if the members wished to have a workshop about this issue to read the Site Plan Review Regulations, Article 13, Design Standards, sections 18 through 41.

Any Other Business before the Board:

Mr. DeSantis said there are 2 major site plan reviews and 2 accessory dwelling units scheduled for the Nov. 21 meeting and advised the board not to cancel the meeting as was discussed at the last board meeting (due to the Thanksgiving holiday).

Mr. Pelkey asked if the meeting could be rescheduled the second Tuesday in November.

Mr. Kestner said due to requirements for abutter notification the meeting can't be rescheduled unless there was extreme weather or other emergency issue.

Next Meeting: Tuesday, Nov. 7, 2017

Adjournment:

Motion: (Laferte, second Pelkey) to adjourn the meeting passed unanimously at 8:15 p.m.

Respectively submitted

Kathleen Magoon

Recording Secretary

A handwritten signature in dark ink, appearing to read 'D. Kestner', is written over a horizontal line.

David Kestner, Chairman