

Town of Farmington
Planning Board Meeting Minutes
Special Workshop
Tuesday, December 8, 2020

Board Members Present:

Charlie King, Chairman
Rick Pelkey, Vice Chairman
Bill Fisher, Secretary
Gerry Vachon, Selectmen's Rep.
Ann Titus

Others Present:

Kyle Pimental, Interim Planner

Board Members Absent:

Jeremy Squires, Alternate, excused
Stephen Henry, excused
Bruce Bridges

1). Call to Order:

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

2). Pledge of Allegiance:

All present stood for the Pledge of Allegiance.

3). Review Section 2.00 Proposed Zoning Amendment Revisions:

Planner Kyle Pimental said he included all of the zoning amendments because there are a few things he needed to go over with the board.

Warrant Article #2, Amendment #1, Section 1.02 Authority, Technical Review Committee - He said he added the DPW Director and Chief Water Operator to the list of members of the TRC.

Warrant Article #3, Amendment #2, Section 1.10 (A) 1i - Mr. Pimental gave the board copies of Town counsel's legal opinion in reference to the board's question about why it's not a good idea to have the Planning Director and the Code Enforcement Officer be appointed to make zoning decisions with the Planning Board as the third person tie breaker.

Chairman King said the attorney's memo was informational, not privileged and confidential and did not pertain to a specific case or lawsuit and the board was just asking for an interpretation to make better planning decisions. He asked Mr. Pimental to read the attorney's memo into the record so that if the board changes their opinion the taxpayers would know why they were changing their opinion. He did so as follows:

"As drafted, Section 1.10 A1 does not clearly establish the division of functions that are supposed to be performed by the Director of Community Development and the Code Enforcement Officer when it comes to interpretation and enforcement of the zoning ordinance. Blurring the lines like this is a recipe for confusion and the Code Enforcement Officer logically

should interpret the zoning ordinance regarding violations. The Director of Community Development interprets the zoning ordinance regarding site plan, subdivision and zoning relief applications. These are really two different roles. Anyone who objects to the interpretation of one of them has a process to appeal to the ZBA under RSA 676:5. Requiring those two staff people to jointly interpret the ordinance creates the potential for ties and obviously that's what the board was trying to prevent by placing itself as a tie breaker. However, this is not a function that NH statutes have said a Planning Board can perform. There's no case we are aware of specifically stating this concept. Perhaps this is because it's not something that any zoning ordinance we know of has ever done so there has been no need for litigation. What we do know absolutely is this the fundamental role of municipal government in NH is that towns and cities and their boards and officials and employees have no inherent authority to act at all. Every power a town has comes from the NH Legislature through statutes. Towns have only the authority granted them in statute or necessarily implied in a statute (Gerard vs. Allentown 121 NH 268, 1981). The reason is unlike some other state's Constitutions, the NH Constitution does not delegate any powers directly to towns and cities nor does it say the state does x, y and z and let the municipality do everything else. The NH Constitution simply says what the state does. As a result a town board has to find a statute that says a board can take a particular action rather than relying on the absence of any statute that says it cannot do that thing. NH statutes grant Planning Boards many powers. The Planning Board prepares and amends the Master Plan (RSA 674:1), may make recommendations for town development (RSA 674:1II), may send members to conferences (RSA 674:1III), may recommend amendments to the zoning ordinance (RSA 671:1V & RSA 675:3), regulate subdivisions (RSA 674:35), perform site plan review (RSA 674:43), review other applications under innovative land use provisions as provided in the zoning ordinance (RSA 674:21), revoke its approvals in certain situations (RSA 676:4a) for example. There are non-zoning issues that are also within the Planning Board's authority under other unrelated statutes- excavation regulations under RSA 155:e and driveway regulations under RSA 236:13. But neither of these have any relation to the zoning ordinance related functions under RSA Chapters 674-676. Necessarily implied in a variety of these functions and specifically noted in RSA's 676:5 III is the authority of the Planning Board to interpret the zoning ordinance in the exercise of subdivision or site plan review and in the administration of innovative land use provisions under RSA 674:21. This might occur not only when a formal application is before the board but also during preliminary conceptual consultation or design review under RSA 676:4. Obviously a Planning Board will be called upon often to interpret the zoning ordinance in those situations. It is also possible that in doing so the Planning Board will second guess the interpretations of other staff who might have given an opinion about a particular zoning provision. For example an applicant may be told by staff that they don't need a variance to do what they propose but the Planning Board still has authority to make its own decision about that. It might for example deny the application because the board

believes the project would violate a provision of the ordinance. However, neither (Att. Keriann Roman) or I (Att. Christine Fillmore) are aware of any statute that grants the Planning Board the authority to issue official interpretations of the zoning ordinance outside of these functions. Nor are we aware of any case law holding that such authority exists. There is only one statute that might possibly grant this authority RSA 674:1 VI. This section states in general the Planning Board may be given such powers by the municipality as may be necessary to enable it to fulfill its functions, promote municipal planning or carry out the purposes of this title. Acting as a tie breaker between two other officials outside of subdivision site plan regulations particularly regarding building permit applications or violations does not fulfill the Planning Board's functions. It is instead a separate function not otherwise provided for in the law. Likewise we do not believe it promotes municipal planning because it is an administrative function not a planning function or carry out the purpose of the planning and zoning statutes because nowhere in those statutes is there a provision for a Planning Board to be involved in enforcement or building permits each of which have other officials dedicated to those functions. Furthermore, there is ample affirmation support in the law RSA 676:5 and case law (ex. Atwater vs. Plainfield) that the ZBA is the board with specific duty to interpret the zoning ordinance and to ensure uniform application of the ordinance. As a result it is our opinion that Planning Boards do not have legal authority to act in this tie breaker role. On a practical level there is a question about whether the Planning Board's interpretation of the zoning ordinance outside of its ordinary duties would create a potential pre-judgment issue if the matter later came to the board as part of an application. The Planning Board is supposed to be impartial and judge each application based upon the information developed through the application process. If the board is drawn into situations outside of the application process it muddies the waters regarding the information the board receives and the potential statements that might be made during the course of that situation that indicate a pre-judgment about a particular project, applicant or property and gives aggrieved parties one more reason to appeal the board's later decisions on an application."

Mr. King said one thing they cited has to do with enforcement regarding building permits and code violations and that's not what the board's intent is. He said their thought was the Code Enforcement Officer was to enforce local codes and building permits as the authority given in Section 2.0 and the board is not weighing in regarding building codes or other enforcement. They're saying we're crossing a line that we're not and they specifically say we can apply this during subdivisions, site plan review, innovative land controls, conceptual meetings before the board so an applicant can ask if something is permitted and we can say it's our interpretation that it is but its non-binding. But we can't interpret it for staff that is unclear as to how to administer it. He questioned the statement that the ZBA's specific duty is to interpret the zoning ordinance.

Mr. Pelkey said they are saying if there's a disagreement between the two persons then they

should have a conceptual meeting with the Planning Board and we can make the decision that they can do this and that's okay.

Mr. King said a conceptual meeting is non-binding and they can't overturn the CEO's interpretation.

Mr. Fisher said the only way to overturn the CEO is through the ZBA and it is the final authority.

Mr. King said the attorney is saying that the ZBA is the board that specifically determines the zoning ordinance and ensures uniform application of the ordinance.

Mr. Pelkey said that would make the ZBA the tie breaker rather than the Planning Board.

Mr. Pimental said it is unclear what the attorney's intent is because you could also read it as the ZBA would be the one to hear the appeal of the Planner's or the CEO's decision.

Mr. King said that currently administrative appeals go to the ZBA and he didn't have an issue with that in the current system. He said the attorney implied that if they make a decision they indicate pre-judgment and he disagrees with the argument that if they interpret the zoning ordinance they may be indicating a pre-judgment to a particular project when the project isn't even before the board.

Mr. Pelkey said the attorney's response consisted of having a position and all the things to back it up with and not what the board asked them to look at to see if they could do this and find out what the legalities are of us doing that. We got all the reasons you can't do what we said you couldn't do before he said.

Mr. King said they are talking about interpreting the zoning ordinance and the attorney said no one has ever done it before so you can't do it either.

Mr. Pelkey said it's good to say if you don't have something specific that says you can do it, you can't do it according to NH law but she didn't cite the laws that allow the CEO to do the things they do.

Mr. King asked where it states by law that the CEO is the interpreter of the ordinance.

Mr. Pimental said he didn't think that was what the attorney was saying because it doesn't have to be the CEO.

Mr. Pelkey said that is something the Town would put in place and the attorney is saying the Town has no authority to do that and we do it anyway.

Mr. King said since about 2001 the CEO was the interpreter of the zoning ordinance because we didn't have full time planning or other resources that are now available and we didn't have issues with interpretation. He said they could have changed it to the Planning Director or the Town Administrator and now they are proposing it.

He said they can designate someone and it goes before the voters for approval so we're asking to put a system in place that's approved by the voters. We can't just change the ordinance without the voters' approval so what is the difference in us saying this is the new system we want and the voters decide what's going to be done in town by approving or denying it he said.

Mr. Pimental said if the board doesn't have the authority to be a tie breaker and it goes to the

ZBA there may be scenarios where the Planning Director is on one side and the CEO is on the other side and people appealing different staff members to the board.

Mr. Pelkey said if they put the ZBA in the position of being the tie breaker then the person has no appeal after that. He said if they are going to be the tie breaker between the staff then they are no longer in a position where they can be an appeal because they've rendered a decision. If the Planning Board puts itself in a position to do that then if there's an appeal it will go to the ZBA and we should talk about the pre-judgment part of this he said.

Mr. King said if someone was seeking an interpretation of if something is permitted in a zone and we say no could they make the case that they are making a pre-judgment but in some ways we are not making a pre-judgment of the application- we're interpreting the ordinance. Something is either allowed or not allowed and that's not really a pre-judgment on an application because it's not an application he said.

Mr. Pelkey said if they came to the board at a conceptual discussion they could ask the same question and we could render a decision that's non-binding. You can't pre-judge it at the conceptual but if you have an opinion on whether you can do this or not and they bring it before you what is going to change your position he said.

Mr. King said in Section 1.10 A1 (i) the Director of Planning and Community Development has the authority to interpret and administer the ordinance and the enforcement of building permits, local codes and the ordinance has to be done through the CEO. He said the zoning ordinance is based upon planning documents and intent and if you have to pick one you would pick the person where that's their expertise and is the person that has worked with the Planning Board in writing the ordinance to be the interpreter. He is the one that spent the time assisting with the draft and would have a better understanding of the intent he said.

Mr. Pelkey said that sounds like they are saying the Director of Planning and Community Development or their designee as appointed by the Town Administrator can interpret the ordinance but the CEO or their designee has the authority to enforce the ordinance.

Mr. King said the authority to interpret, administer and enforce the ordinance should remain with the Planning Director because there may be some initial involvement with the CEO such as with a zoning violation that becomes a legal issue and the Planner doesn't deal with that. He then suggested it could be worded to state the Planner has the authority to interpret, administer and assist in the enforcement of the zoning ordinance.

Mr. Pimental said his recommendation would be that the Director of Planning and Community Development or their designee as appointed by the Town Administrator has the authority to interpret and administer this ordinance and that the Code Enforcement Officer has the authority to interpret, administer and enforce all local codes, issue building permits... necessary to ensure compliance with the local building codes and address any zoning ordinance violations.

Mr. King said that it should say the Director of Planning and the CEO would assist each other because if one is going to interpret and administer he needs to say this is the violation and

initial enforcement would go to the CEO.

Mr. Pimental said he told the attorney that he thought the board's thought process was unique in that if 2 people couldn't agree on something to have a tie breaker and then flag that as something that needs to be addressed. He said there is some merit to what the attorneys presented and there is probably a reason why they couldn't find an example of any other community that does it that way and that's not to say that should be the only reason. He said the Director of Planning should still consult with other staff members to get as much information as possible but that person has the ultimate authority to make a decision. We could still accomplish what the board was thinking to not just have one mind make a decision and try to get some more thoughts and come to a conclusion he said.

Mr. King said if the Planner has to make an interpretation he may have to come back to a subsequent meeting with the board and ask them for their thoughts on his interpretation.

Mr. Pelkey said they could have a conversation about a concept that's in question without getting into the specifics of it and could talk about a section of the code and what it means without any knowledge of what has gone on in the past.

Mr. Pimental said he could make an interpretation and it gets to the board and the board disagrees with it.

Mr. King said the problem with that is if the Planner is the sole interpreter the board doesn't have the right to disagree.

Mr. Pelkey said they do have that right when it comes to site plan review and the attorney grants that the board has the right to do site plan review.

Mr. Pimental said in the attorney's example if the Planner tells an applicant they don't need a variance that it will be fine if it gets to the board and the board says they need a variance.

That's a scenario where the board interprets something differently than the Planner he said.

Mr. Pelkey said the board wouldn't give the applicant an exemption and they would have to go get a variance.

Mr. King said if an interpretation is made that an applicant doesn't need a special use permit and the board determines they do need a special use permit the applicant would say the interpreter of the ordinance says they don't need one.

Mr. Pimental said in paragraph 4 of her memo the attorney says if a staff member says they don't need a variance the Planning Board could deny the application because the board believes the project would violate a provision of the ordinance.

Mr. Pelkey said their argument all along has been the board has to interpret the ordinance and he didn't care if they don't like it that they are not doing it in a formal meeting with the applicant in front of them that locked themselves into an application instead of doing it up front so they can get everything right so when it comes to the board it goes through smoothly. We'll have to wait until they show up and then tell them they can't do that anymore and to go back and start over he said.

Mr. Fisher said or to go to the ZBA and to have them make the final decision.

Mr. King said by the time the applicant comes before the Planning Board and the interpretation is made the 30 day time limit for an appeal has been exceeded most of the time. He said he could foresee where a person would ask the staff to interpret the ordinance because he planned to make a formal application and the staff member said they don't need a variance and they get before the board and they do need a variance and asked what would happen then. The attorney is saying we can deny the application but the interpretation by the sole interpreter says it's not required and the applicant is right in the middle he said.

He said if you turn the issue the other way and the Planner says he does need a variance and the applicant doesn't get it he can't come to the Planning Board to make that argument and for the board to say he doesn't need it. He said the attorney's argument is flawed because the misinterpretation was done prior to the board meeting and the applicant can't get to the board for them to interpret the ordinance during an application review.

Mr. Pimental said he could see where the board is coming from but in paragraph 4 the attorney is saying the board has that authority when there is an application in front of them and they don't have it when there's none.

Mr. Pelkey disagreed and suggested the attorneys should come in and talk with the board.

Mr. King said a lawyer is going to interpret the case law, but there is no case law regarding this fundamental approach to the interpretation of zoning, to have no opinion or there is no case law that supports it but there's also no case law against it.

Mrs. Titus suggested asking the attorney to come in and they can argue it with her and maybe she will change her mind.

Mr. Pimental said they could do that but for the purposes of this amendment for now he would separate out the Director of Planning or their designee appointed by the Town Administrator having the authority to interpret, administer and assist in the enforcement of the ordinance and leave the language the same for the CEO except at the end to add "and assist in any zoning ordinance violation".

So moved by Mr. King and seconded by Mrs. Titus.

The motion passed 5-0.

Mr. Pimental said if the amendment passes at Town Meeting and the designee does become the Director of Planning he will make it a goal to not be interpreting the zoning that he believes would be in direct conflict with the board would see it as. He said having the Planner interpret the zoning is more appropriate than the CEO only because he's with the board twice a month writing the ordinance together or making changes to the site plan regulations so he has a pretty good understanding of where the board wants to go and why and can use that to make an informed decision with an applicant.

Warrant Article #4, Amendment #3 Section 2.00 Base Zoning Districts – Mr. Pimental said this is the final version in cleaning up this section. He said there is one typo in section B that should be

changed from Table "2.09" to "2.00 C".

He said the board talked about removing the "PR" (Permitted with Review) and staying with "P" (Permitted Uses) and the R's shown in red in the Table indicate they are going away.

He said another change in this section is that Section D Permitted with Review will be removed (Section E Special Exception General Standards becomes Section D). He said he moved section 1 g (the proposed use is consistent with the character of the other allowed uses in the district) to 1a because it is the most important and that is reiterated on page 9 where that phrasing is included in each of the zoning districts and there is no different criteria nor anything that says the special exception for rural residential district is different from the urban residential district. They all point to the general standards so he left the general standards essentially the same other than moving that one sentence up and that will be for every district so we don't need to say that in each one as it's redundant he said.

He said he added Section #5 that states that complaints of the ZBA's decision on the special exception are first heard by the ZBA and then may proceed to Superior Court as that wasn't explicitly stated and he wanted to make sure it was clear.

Mr. Pimental said nothing has changed with the Table of Permitted Uses other than to get rid of PR's and keeping the P's. He said there are other things here that the board might want to address next year such as using a conditional use permit, to provide clearer definitions of what some of these uses are and to start getting rid of so many uses allowed by special exception. He said the board should be thinking about the uses they might want to allow but that will have an impact on a neighborhood and what additional requirements they would add to the site plan to minimize that impact.

Mr. Fisher returned to the issue they had with the shop downtown that could sell bicycles but couldn't repair them and asked if "repair service not involving motor vehicles is permitted in the Village Center District" is correcting that problem so he could repair bicycles.

Mr. Pimental said if this were to pass and an applicant had an existing retail store where they wanted to provide repair services to the items they sold he would not interpret that as two separate uses. I would view that as a retail store providing a couple of different services within that business. It's the same as Best Buy as they sell computers and they also fix computers there and that's not 2 separate principle uses. I wouldn't get into motorized or non-motorized repairs he said.

Mr. Fisher said unfortunately that didn't work for the shop owner.

Mr. King said there is a new business downtown selling misc. used items and asked if they wanted to repair some of those items where that would fall.

Mr. Pimental said he would view that the same way as a business that is trying to provide services that make them functional unless they were making changes to the building or adding new space or the repairs were being done in the customer area that could be a safety hazard.

Mr. King asked if there is a spot in the zoning ordinance where they could state they are also

allowing sales and service.

Mr. Fisher said the problem was originally that the CEO considered it 2 separate uses and he would not authorize the repair of anything. He said if they are putting it's permitted to make repairs not involving motor vehicles it doesn't take care of computers, etc.

Mr. King said for example if someone has a hair salon and some customers want to buy some products at the hair salon and the business is going from doing hair (providing a service) to selling products (retail sales) that are an accessory to their business.

Mr. Pimental said he would look at it as if it's an accessory to their principle use. He said selling shampoo if you are a beauty salon isn't a separate use but if they wanted to sell milkshakes that is not complimentary to a hair salon and is a separate use. He said if the applicant wants to add something that is an accessory to their primary use and not changing the building it doesn't need to come to the board because there is nothing for the board to review.

Mr. King asked if it makes sense to state in the ordinance that these uses are allowed as accessory sales or services to the products or services that they offer rather than implying it.

Mr. Pimental said if the board wants to do something like that they may want to make an amendment to section F Principal Uses (which will become Section E) where it says "All lots are allowed only one principle use except as expressly provided otherwise in this ordinance. Each lot requires a principle use in order to have an accessory use". He said instead of specifically calling out retail and sales they could add some language here that allows for a person to have other uses as long as they are accessory to the principle use and it would not be considered two separate uses.

Mr. Fisher suggested they use "complimentary" instead of "accessory" because accessory can be interpreted various ways but selling shampoo is complimentary to getting your hair done.

Mr. King said it should say a "reasonable" complimentary use is allowed.

Mr. Pimental said that is open to interpretation but it could be done.

Mr. Pelkey asked if he was selling bikes but he is making more money fixing them and wants to increase the size of his repair business but is not increasing the size of the building's footprint what would happen. I will have to sell less bikes to fix more bikes so selling bikes will take a smaller part of my footprint and fixing bikes will take a larger part of my footprint and I haven't done anything to my neighbors and it doesn't change the impact he said.

Mr. Pimental said he would think of it as do they need to come to the Planning Board.

Mr. King said they want to encourage businesses to branch out to areas complimentary to their initial business where there may be more market or demand. If we can add language that references that intent it would be more likely to be interpreted that way in the future he said.

Mr. Pelkey said it could say each lot requires a principal use and may have multiple complimentary uses.

Mr. Pimental said they may also want to add that the complimentary use is allowed in that district. He gave the example of a nail salon that wants to add tanning beds and the Town has

spas/masseuse as a separate use that is not allowed there that is where the board could say that's going too far. He said if they put some of this language in here it will offer more flexibility than just saying you're allowed one use and anything else is a second use in his opinion.

Mr. King said he wanted to take some of the opinion out of this and get it into the spirit and intent of the ordinance by adding that language.

Mr. Pelkey said if someone says their business is a spa instead of a hair salon they have given themselves a lot more flexibility by definition. He said when a business starts they don't always know what their clientele is there for and may find out they will be more successful if they move toward offering other products or services and if we could make it so they could be more flexible without overburdening them with regulations it would be good.

Mr. Pimental said he would draft some language saying complimentary uses to the principal use are allowed so long as those uses are allowed within said district.

Motion: (King, second Titus) to approve the amendment to this section passed 5-0.

4). Agricultural Resources:

Mr. Pimental said as part of the legal opinion he asked for more information on how they could ensure that agriculture is not over regulated and they discussed handling it in the site plan regulations at the last meeting. He then read the attorney's opinion aloud as follows:

"Regarding the question about site plan approval for agricultural activities, yes there is some flexibility built into the law so that site plan review doesn't have to be required for everything. Specifically with respect to agricultural activities and agritourism RSA 674:32 (b) authorized towns to regulate new, reestablished or significant expansions of agricultural uses by Special Exception, building permits, site plan review and/or other local land use review. One option here is to establish in the ordinance some threshold of what constitutes a significant expansion of agricultural or agritourism use and not require review for anything below that threshold. In addition RSA 674:43(iv) allows towns to establish thresholds based on the size of a project or tract below which site plan review is not required. My understanding is that the board feels strongly that only major agricultural operations should be subject to site plan review. To accomplish this they could define what major agriculture is and require a site plan review only for projects that cross this threshold. This might be something like the size of the parcel or particular aspects of intensity, vehicle trips, specific traffic, noise, dimensional uses, etc. Whatever the threshold or definition is there should be a clearly articulated reason for it based on specific concerns about impact or growth so it is clear that the line isn't being drawn arbitrarily".

Mr. Pimental said he spoke with Att. Fillmore and that she mentioned that an option is to establish this in the ordinance and the board talked about putting it the site plan regulations and she said the law allows for that to be the same so they could deal with it in the zoning or in the site plan regulations.

Mr. Fisher asked if they could look at some surrounding communities to see what they have

done. He said we are not the only one to have this question and that New Durham comes to mind as primarily agricultural and they may have already addressed it.

Mr. King said he would be curious to see what other towns have done regarding the thresholds. He said they have to define the threshold for a significant expansion and they can add requirements or thresholds based upon the parcel size, etc. He said it would be the impact to the neighborhood that would cause it to require a review.

He said he didn't know if you could go by tract size because someone could have a one acre parcel and have a pretty big operation with a significant impact to the area.

Mr. Pimental said he would use both approaches because you can't rely solely on the size or solely on the impact.

Mr. Fisher said he would limit it to a percentage increase such as a 50% or 75% increase in size.

Mr. King asked what the increase is to (#of animals, activities, building size, etc.) and from what. He asked where they would draw the line as to when that change started.

Mr. Pimental said a staff member is looking into some NH examples (of what other communities have done) and he told her if that is unsuccessful to branch out into New England. He suggested if it goes through the Jan. public hearing process without a lot of push back that they should start to structure it in February so they can set up the public hearings to change the site plan regulations after the March Town Meeting.

Mr. King said at the last Town Meeting some changes were made to the density in the Village Center and there was some concern about that being aggressive and asked if there have been any applications that sought to increase the density based upon that change.

Mr. Pimental said no and the only project before them was Jason Lauze's property (for conceptual discussion) which hasn't made it to the board yet. He said Mr. Lauze initially wanted to put in 3 residential units and the density didn't allow that and he has changed his plans a few times since then. Right now he would be allowed to have more residential units than originally allowed but he has decided to go with all office space on the second floor and there has not been anything else presented to us since then he said.

Mr. King said he was hoping there would have been 1 or 2 applicants looking to do that and they could see how it would be presented and if it accomplished what they wanted it to do.

Mr. Pimental said there have been some new business uses in the Village Center that they have expedited but no mixed use building that would have benefited from more residential units.

Mr. King said Rochester is still struggling with their downtown and people say ours is all vacant but comparatively we're holding our own better than Rochester.

Mr. Pimental said this wasn't the year to invest a lot of money into a mixed use building and because of the housing shortage that once people figure out they are allowed more units downtown it will attract more people to invest in that area but it won't happen overnight.

5). Any Other Business before the Board:

Mr. Pimental said a few years ago an applicant came in for a site plan review for a small organic

greenhouse operation and there were some issues with the road. Their site plan was approved in August 2018 so their 24 month time frame expired in August 2020. He is an active military member and got called to active duty in 2019 so he was away and has not started his project and wants to know what he needs to do to move forward with that site plan.

He said in order for him to have his 5 year exemption there has to be active or substantial progress on the property that may have not happened yet. He said given the circumstances he would recommend that the board grant an extension to the active or substantial progress for another 12 months.

Mr. Pelkey asked if he has something to substantiate that he was called to active duty.

Mr. King said it is a reasonable request but it needs to be made to the board in writing.

Mr. Pimental said he thought the way to handle it was to put him on the agenda for a public hearing and to notify his abutters.

Mr. King said they would be amending an approval decision because they would be granting an exception so it needs to be done at a public hearing with due process for the abutters especially where the 2 year time limit is a statutory requirement.

Mr. Pelkey asked if there is anything in case law that would allow them to extend the timeframe without a hearing and that would be a question for legal counsel.

Mr. Pimental said he wasn't sure about that and that he asked 2 other Planners and they advised him to err on the side of caution and to hold a public hearing on the matter.

Mr. Pelkey said he hated to make the guy go through that with the costs involved.

Mr. King said they may be able to waive some of the Town's costs but may not be able to do that for the abutter notices.

Mr. Pimental said the highest cost is for the legal notice in the newspaper.

Mr. King said if it is required they should do the entire public notice because someone with an objection could claim they weren't notified or the hearing wasn't properly and legally noticed.

Mr. Pelkey said if there is nothing in the case law that allows for this then somebody should be "poking" our state reps and get them to address it so the boards have the ability to grant an extension in these cases.

Mr. Fisher asked if they could recommend that this should go to the ZBA and have the ZBA either grant or not grant the extension.

Mr. Pimental said he didn't think he could do that because it was a Planning Board decision and there was no variance needed for his site plan.

Mr. Fisher recalled the applicant couldn't sell Christmas trees on the lot and he had to go to ZBA and they approved Christmas tree sales on his lot.

Mr. King requested that town counsel be asked if there is any case law or RSA that would not require them to have a public hearing to grant an extension on the time period for this.

Mr. Fisher recalled an instance in 2015 or 2016 where someone was granted an extension without a public hearing.

Mr. King said if they came before the board that was a publically noticed public hearing as that is part of the normal procedure.

Mr. Pimental said he would contact the attorney and if there is no way around it they would schedule him for the public hearing on the zoning amendments in Jan. and ask the Selectmen if they would waive the legal notice fees.

Mr. King suggested that he also check to see if there is an application fee and if so if that could be waived as well.

Mr. Pimental said there is no application involved and it is more of a formal request. He said he was trying to avoid the amended site plan review process because the site plan that was submitted is just a tax map with a couple of boxes on it and suggested if that was what was approved to leave it alone.

Mr. King said if they are not on solid legal ground somebody else will want the same exception for some other circumstances and when they start to not follow the rules there needs to be reasons to justify it.

Mr. Pimental asked what the board would want to see from the applicant.

Mr. Pelkey said he should have a copy of his orders to report for active duty.

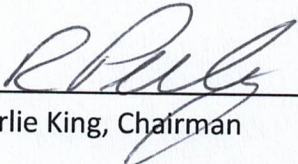
5). Adjournment:

Motion: (Titus, second Vachon) to adjourn the meeting passed 5-0 at 7:25 p.m.

Respectively submitted

Kathleen Magoon

Recording Secretary



Charlie King, Chairman

