

NORTH BERWICK, ME 03906

MINUTES OF PLANNING BOARD FEBRUARY 11, 2016

Present: Chairman Geoffrey Aleva, Rick Reynolds, Jon Morse, Matthew Qualls

Absent: Barry Chase, Mark Cahoon, Anne Whitten

Also Present: Stephanie Bennett, Alfred Bennett, Janet Hooke, Becky Hanson, Philip Shaw, II, Van Charron, Diane Clemons, Irene Haskell, Marilyn Rendell, Lillian Brown, Dorothy Shaw, Kristie Michaud, Julie Alexander, Susan Hall, Sid Hall, Pam Brezak, Carl Brezak, Shirley Barto, Lorinda Hilton, Lincoln Harrison, Teddy Hoffman, Dwayne Morin, Qiana Qualls, Randy Boston, Israel Gray, Carl Works, Elle Hickey, Laurienne Missud Martin

1. Call To Order:

Chairman Aleva called the meeting to order at 6:30 pm.

2. Review Previous Minutes:

Rick Reynolds motioned to approve the minutes from January 28, 2016 as written. Jon Morse seconded the motion. VOTE: 3-0 Abstain: 1

Chairman Aleva moved Matthew Qualls up to full voting status.

3. Current Business:

Chairman Aleva stated that the purpose of this meeting was to hold a Public Hearing for the proposed 8 questions that will be affecting our Zoning Ordinance. He will read each of the questions and their intent, have a discussion and then move on to the next question.

Question #1: Shall an ordinance entitled, "An Ordinance Amending the North Berwick Electrical Ordinance" be enacted?

Intent: The purpose of this revision is to maintain compliance with the State of Maine approved Codes by adopting the National Electrical Code provisions regulating electrical systems.

Chairman Aleva asked if there was any public comment. There was none.

Question #2: Shall an ordinance entitled, "An Ordinance Amending Section 5.1.9 of the Zoning Ordinance to state the performance standards and requirements for Explosive Materials" be enacted?

Intent: Currently propane tanks of 250 gallons or greater are considered bulk storage. This amendment brings the Town's Zoning Ordinance into conformity with the State of Maine Fuel Board's adopted standards and rules for Liquefied Petroleum Gas or Compressed or Liquefied Natural Gas.

Chairman Aleva asked if there was any public comment. Dwayne Morin explained this question. He stated that our current Ordinance states that all propane gas that is over 250 gallons is bulk storage and needs to be 75 feet from the property line. He stated that this is very problematic in the down town area. If somebody has 2 bottles against their house, it needs to be 75 feet and this is not practical. The current State and Federal standards call for them to be 25 feet from the property line.

There was no other public comment at this time.

Question #3: Shall an ordinance entitled, "An Ordinance Amending the Land Use Table 4.3 of the Zoning Ordinance to require a Code Enforcement Officer Permit (CEO) instead of a Conditional Use (CU) Permit for certain uses within the specified Zoning Districts: Shoreland Limited Residential District – Single Family Residence; Shoreland Limited Residential District – Structures Accessory to uses which are similar to permitted uses; Resource Protection District – Structures accessory to permitted uses; Shoreland Stream District – Structures accessory to permitted uses; and Shoreland General District – Structures accessory to permitted uses" be enacted?

Intent: This amendment is to make the Code Enforcement Officer the permitting authority over certain types of use applications where currently a Conditional Use permit through the Planning Board is required. This amendment leaves unchanged the authority of the Code Enforcement Officer, in his or her discretion, Planning Board review of permit applications under section 6.9 of the Zoning Ordinance.

Dwayne projected the Land Uses Tables on the screen and Chairman Aleva reviewed where the changes would be on them.

Chairman Aleva asked if there was any public comment at this time. There was none.

Question #4: Shall an ordinance entitled, "An Ordinance Amending the Land Use Table 4.3 of the Zoning Ordinance to require a Conditional Use (CU) Permit for Banks and Pharmacies (with or without drive through) in the Village Center District, Shoreland General District, Commercial District, Commercial II District and Industrial District" be enacted.

Intent: To allow for Banks and Pharmacies to be a Conditional Use (CU) in the specified districts and to allow them with or without a drive through.

Chairman Aleva showed the audience where the changes were in the Land Uses Table. He asked if there was any public comment.

Laurienne Missud Martin asked what our current Ordinance was regarding this. Chairman Aleva said that our current Ordinance states “NO”. He said that they wanted to word it differently by specifying Banks and Pharmacies only for drive thrus. Susan Hall asked if this meant that we will get a pharmacy. Chairman Aleva stated that if a pharmacy was looking to come into town, they would be allowed in the districts that are listed in the Land Uses Table. Laurienne Missud Martin asked if this was in line with our Comprehensive Plan and Chairman Aleva said that it was. He stated that it had been discussed in the Comprehensive Plan but had never been pushed through in the Zoning Ordinance.

Israel Gray stated that he has the property right by Hannaford on Route 9 and he had an inquiry from a developer in the fall. He said that it was the issue of the drive-thru that held things up. He wanted to know what the setbacks were if somebody tried to put something on the corner of Route 4 and Route 9. He was wondering if there was a chance that he would be sandwiched in between two businesses. Chairman Aleva said that there were setbacks and other things required from the property lines but he was not sure what it was off the top of his head. He told Mr. Gray that they could meet after the meeting to review the book.

There was no other public comment at this time.

Question #5: Shall an ordinance entitled, “An Ordinance Amending Section 4.2.j and Land Use Table 4.3 of the Zoning Ordinance to require a Conditional Use (CU) Permit for Uses Bordering Town Lines not currently permitted in the Town of North Berwick meeting the established performance requirements” be enacted?

Intent: This amendment allows, in all zones except the Aquifer Protection Zone A and the Aquifer Protection Zone B, for the expansion of bordering uses into North Berwick when the existing conforming use in a neighboring community is a non-conforming use in North Berwick. The non-conforming use is to be reviewed by the Planning Board as a conditional use and must meet the performance standards established.

Proposed to Read:

4.2.j. Uses Bordering Town Lines: The Planning Board shall be authorized, in all zones with the exception of Aquifer Protection Zone A and Aquifer Protection Zone B, to allow for the expansion of the use of a bordering property into North Berwick not currently permitted in the North Berwick Zoning District through the conditional use process as long as the following conditions are met:

1. The use cannot expand more than 250’ along the existing roadway frontage.
2. The use cannot expand by more than 50%.
3. The use must have a 100’ vegetated buffer.
4. The use cannot be closer than 250’ from an existing residence.

Dwayne put up a map of all the surrounding towns. Chairman Aleva stated that this is for property owners that abut our town line. He said that the most visible area is along Route 4 at the border of North Berwick and Berwick.

Chairman Aleva asked if there was any public comment at this time.

Lorinda Hilton asked if the other towns were going to reciprocate and she wanted to also know what the advantage was for our town. Chairman Aleva said that the other towns would not necessarily reciprocate. Lorinda Hilton stated that this was obviously being done by one person. Chairman Aleva said that at this time it was in discussion for one person. Mrs. Hilton asked if this could lead to spot zoning. Chairman Aleva stated that he did not think so. Dwayne stated that because we are actually implementing it into our zoning it is not considered spot zoning. If we were going to say that just that area of town would be changing than that would be spot zoning. Because we are doing it on all borders of our community, it is not spot zoning.

Carl Works stated that this had the potential to reduce our zoning requirements. If we have a stricter zoning than the abutting town, it would reduce our zoning down to the lowest common denominator which would be the town next door. It would not require them to come up to our standards. Chairman Aleva stated that they would still have to meet our requirements for setbacks from property lines and meet these conditions with respect to buffers and amount of expansion allowable. Mr. Works wanted to make sure that we were going to maintain our standards. Chairman Aleva stated that we would maintain our standards. Chairman Aleva said that all of the projects need to go through the Planning Board for a Conditional Use so there would be a Public Hearing, the project would need to meet our zoning requirements regarding setbacks, screening and other items like that. The Planning Board can put any conditions that they deem necessary to protect the residents.

Lorinda Hilton asked again what the advantage was for us to do this. Chairman Aleva stated that the advantage was that a business can expand into our town. There may be some tax benefits for the use. He stated that the Planning Board was asked to look into it, had many discussions as a Board and with the Town Manager, and these are the conditions that we felt would be required on a project in addition to a Planning Board review to allow this to occur.

Shirley Barto wondered what it would do to the residents on Route 4 with Commercial extending into their property like what happened when Hannaford came. Chairman Aleva stated that with the limits that they have set such as the 100' vegetated buffer and a limit on how much they can expand, this will help to protect and buffer other uses along that edge. Shirley Barto asked if this would give our town the opportunity to extend from their border down Route 4. Chairman Aleva said that it would not. Dwayne stated that the way this is being proposed is that the most that they can come into our town is 250 feet. Once they hit the 250, it is over. They cannot go any further.

There were no more comments on this question.

Question #6: Shall an ordinance entitled, “An Ordinance Amending Sections 6.1 and 6.2 of the Zoning Ordinance to require a demolition permit” be enacted?

Intent: To require a demolition permit for the removal of a structure in the Town of North Berwick in order to keep accurate record of properties within the town.

Chairman Aleva stated that there will be 4 sections of the ordinance that will be changed.

Chairman Aleva asked if there was any public comment. There was none.

Question #7: Shall an ordinance entitled, “An Ordinance Adding a new section 1.5.7 and Amending Sections 3.2, 5.2.6, 6.5.1 and 6.5.2 of the Zoning Ordinance to amend the sign requirements” be enacted?

Intent: To amend the Town of North Berwick sign ordinance to ensure compliance with the constitutional requirements under the First Amendment.

Dwayne Morin stated that this is something that they have been working on for about 5 months. This past year there was a Supreme Court case called the Reed Case that has affected every single town’s sign ordinance in the United States. The Reed Case states that we are unable to treat signs differently because of the First Amendment of Free Speech. Most sign ordinances treated signs differently. Currently, our current sign ordinance is not enforceable because it is unconstitutional. He stated that we made changes to a few sections. The first one is that we added a Substitution Clause. This just states that if there was an inadvertent favoring of something over another thing, that it was inadvertent. The goal was not to hinder anybody’s free speech when it comes to signs.

Dwayne said that they had also made some changes to some of the definitions related to signs. We had to change the Billboard definition. Billboards in Maine are illegal and our definition did not match up with the State’s definition. We are just adding a section in our Ordinance to make it match the State one.

The next change was in the Sign definition. We needed to make a couple additions and removed something out of the Sign definition. When our Sign definition talked about conveying a message, it said “relating to any object, product, place, activity, person, business, service, institution, facility, organization, entertainment or amusement available either on the lot where the sign appears or in some other location.”. This is against the First Amendment so we had to strike that from our definition.

The other definition that we changed was the one for Temporary Signs. We added banners and feather flag signs to it so it was known that these were considered temporary.

The last definition that we added was for Traveled Edge. Dwayne said that it is always something that we said but it was never in writing. The Traveled Edge is the fog line (white line) painted on a roadway or, if no fog line exists, the edge of the pavement of the roadway. This will come into play when looking at some of the items in the Sign Ordinance.

Dwayne stated that our Zoning Ordinance used to have sign regulations in four different sections. We have taken all of those sections and combined them into one section. There are a lot of strike throughs and a lot of changes. When they looked at the permanent signs, there were really no changes except for one change that was related to bill boarding. He stated that item 7 was added and reads, "Permanent signs shall be placed only on the same lot as the use or activity which they are advertising, except that "official business directional signs" and "approach signs" may be permitted to be located "off-premises" provided they conform the requirements of 23 M.R.S.A. §§ 1909-1912-A (directional signs) and 1914 (approach signs) (2016) and applicable Maine D.O.T. regulations, and off-premises name signs are allowed in the Resource Protection, Stream Protection and Limited Residential Districts provided such signs do not exceed two (2) signs per premises and six (6) square feet in surface area, including the surface area of all informational sides." He stated that the official business directional signs are informational signs that list a business and state what direction and how far it is located. Effective January 1, 2016, the State are now allowing approach signs. If you own property that is located behind somebody else's property and you have a right of way that goes into your parking lot, you are allowed to put your sign at the edge of the road. This is technically bill boarding because the sign isn't on your property. It is actually at the road's edge. The State decided to allow these now.

Dwayne stated that the big changes are with the temporary signs. We used to have different regulations for different types of signs. If you wanted to put up a political sign, there were certain regulations to meet. If you wanted to put up a yard sale sign, it was different regulations. If you wanted to put up a construction sign that was another regulation. Dwayne stated that we had 7 different regulations relating to temporary signs. The Supreme Court decisions now states that you cannot differentiate between the signs. Everyone has to be treated the same. We had to take all the different regulations and combine them into one requirement. Dwayne stated that the Planning Board looked at everything and found the averages of all of them and put them into one regulation. Dwayne stated that they will require the following:

1. No temporary sign shall exceed twenty-four (24) square feet in surface area, including the surface area of all informational sides. The total on-premise temporary signage shall be limited to fifty (50) square feet of surface area, including all informational sides, at any given time.
2. The maximum height of a temporary sign shall be fifteen (15) feet above ground grade to the topmost point.
3. No temporary sign may be located within eight (8) feet of the traveled edge of a travel way or within five (5) feet of the paved edge of a sidewalk.

4. No temporary sign may be displayed for more than six (6) weeks prior to any event bringing about its use, except that no temporary commercial sign advertising goods or services may be displayed for more than two (2) weeks prior to such event, and shall be removed forthwith after the event but in no case later than one (1) week after the sign has fulfilled its function.

Dwayne stated that the reason that they used the 6 weeks prior and 1 week after is because this is the State law for political signs. He stated that 80% of all temporary signs that go up are political signs.

Dwayne stated that there is one change that the Supreme Court is allowing towns to do and that is being able to differentiate between non-commercial speech and commercial speech. He said that all non-commercial speech needs to be treated the same. For commercial speech, we are allowed to treat them differently for time duration. For the commercial signs, the rule will be 2 weeks before an event and come down 1 week after the event. We removed a lot of the language in the new Ordinance because all of it was deemed unconstitutional.

Qiana Qualls stated that a business can put up a sign about a sale on one thing and take it down after it is done. They can immediately put up a different sign about a sale on something else and take it down after. This would mean that a business can continually have a sign out front. Dwayne said that this can happen and unfortunately this is the only way to handle it. He stated that they could have also just eliminated temporary signs in North Berwick but they would have had a hard time when the politicians came around to put up their signs. If we are going to allow one type of sign, we have to allow all signs to treat people fairly. He said that they put together the best option to try and satisfy everyone and stay within the new law.

Pam Brezak asked if we would be able to allow non-commercial temporary signs but not commercial signs. Dwayne said that they couldn't do that. If we are going to allow one we have to allow it for both. The only differentiation that we can make between the two is the duration of the signs.

Becky Hanson stated that she has always been told that Dwayne is very much against the signs and don't want people to put them up. He said that he had no problems with them as long as they followed the regulations that were in place. Dwayne stated that this Ordinance has to do with the type of signs allowed in our community. However, if somebody owns a piece of property and he would want to put a sign up on their property he would need to ask the property owner. The islands or medians in town are owned by the Town of North Berwick and managed by the Board of Selectmen. The Board of Selectmen have said that we will not put any signs up on the Veterans Memorial or on the Flat Iron Park because they are considered holy ground and we do not want to riddle them with signs. Dwayne said that as far as any other place in town, if the people allow you to put them on their property than they can do so. Janet Hooke stated that she believes that Mrs. Hanson is referring to the islands at the Route 9 and Route 4 traffic lights.

She said that she has seen signs there. Dwayne and Chairman Aleva stated that there are not supposed to be any signs there because that is State owned land. Chairman Aleva said that if the DOT workers see a sign there, then they can remove it. Becky Hanson asked about the corner where Perkins store used to be. She asked if it is okay with the property owner there, can they put up a sign? Dwayne said that as long as it followed the Town Ordinance, he didn't care.

Lorinda Hilton was wondering about signs that people put up regarding lost pets. Dwayne said that they are considered a temporary free speech sign, so when the pet is found, the sign needs to come down. Dwayne stated that the Code Enforcement Office will have to use some discernment when enforcing the sign issues.

Becky Hanson wondered about the signs for any new businesses coming into town. She asked if they now had to be nicer signs and not bright neon signs. Dwayne stated that neon is not allowed and they cannot be internally lit. Mrs. Hanson asked if it said anything about having the signs be specific like colonial, country or New England style signs. Dwayne said that our sign ordinance does not go into specifics on how it has to be built. It just discusses the size and that it cannot be neon, internally lit, LED or flashing lights.

Randy Boston stated that he lives across the street from Hannaford and has an issue with the light on the flag pole. He stated that this light flashes right in his window. He has been to the Town several times but nothing has been done about it. He said that the Ordinance states that glare shall not exceed on somebody else's property. He has been to see Dwayne and was told that there is nothing that he can do. He wants to know what can be done about that. Chairman Aleva asked if he had called the Store Manager about it. Mr. Boston said that he had but he is not getting any satisfaction from him. Dwayne stated that this was not the forum for this right now.

Laurienne Missud Martin stated that the sign at the entrance of the Hannaford on Route 4 is right across the street from her. She said that it is very bright. She stated that she understands that this is not the forum for this but we are talking about our expectations and our understanding about what these Ordinances mean and the expectation that the Board will follow the Ordinances and not make exceptions for businesses. Dwayne stated that the Hannaford sign is actually the reason why internally lit signs are no longer allowed. Hannaford was approved prior to the newer Sign Ordinance being approved which no longer allowed internally lit signs. Laurienne Missud Martin said that she was pretty sure that she was told that they were not going to do internally lit signs. She remembers sitting at the Planning Board meetings when they were discussing all of this and she does not think that they were supposed to do the internally lit signs. There was further discussion from the audience on what could be done about it. Dwayne told them that it had been approved by the Planning Board so there was nothing they could do about it now. They cannot go back and make them change it to the new sign regulations because they are grandfathered in to what they were approved for. Lincoln Harrison asked if there was a light pollution ordinance and Dwayne said there was not. Chairman Aleva said that it is something

that the Planning Board can discuss and check into. Shirley Barto stated that we do not have an Ordinance regarding pollution but we do have one against glare. It should not encroach on people's property. Chairman Aleva stated that he doesn't believe that it includes the flag light.

There were no other comments on this question.

Question #8: Shall an ordinance entitled, "Establishment of Planning Board" be enacted?

Intent: The purpose of this amendment is to re-establish the Planning Board created under the old statutes and, under home rule authority, to amend the terms of Planning Board members from 5 year terms to 3 year terms.

Dwayne stated that our Planning Board was originally established in 1967 under a whole different set of laws and Selectmen were allowed to create the Planning Board. Under that law, they had to have 5 year terms. In 1971, the State said that the towns could change the terms but they would have to create an Ordinance. The Board would like to move forward with having the 3 year terms. All the other Boards have 3 year terms so we want to make it consistent.

Chairman Aleva closed the Public Hearing at 7:33 pm.

4. Other Business:

There was no other business at this time.

5. Adjournment:

Rick Reynolds motioned to adjourn the meeting at 7:34 pm. Jon Morse seconded the motion.
VOTE: 4-0

James Marchese
Planning Coordinator

Respectively submitted,
Susan Niehoff, Stenographer

Chairman Geoffrey Aleva

Barry Chase

Rick Reynolds

Mark Cahoon

Jon Morse

Anne Whitten

Matthew Qualls