

PLANNING BOARD MINUTES
December 10, 2008

ROLL CALL:

Phil LoChiatto, Chairman – Present	Nancy Prendergast, Vice Chairman – Present
Rick Okerman, Secretary – Present	Walter Kolodziej, Regular Member – Present
Ruth-Ellen Post, Regular Member – Present	Pam Skinner, Regular Member – Present
Louis Hersch, Alternate Member – Not Seated	Kristi St. Laurent, Alt Member – Not Seated
Sy Wrenn, Alternate Member – Excused	Bruce Breton, Selectmen Member – Present
Galen Stearns, Selectmen Alternate – Excused	

STAFF:

Al Turner, Director of Planning and Development – Present

Mr. LoChiatto opened the meeting at 7:00 pm. The Board stood and recited the Pledge of Allegiance.

CORRESPONDENCE:

- Letter from Nobis Engineering regarding postponing the Ledge Road hearing to February 4, 2009 and to extend the clock. Mr. Breton motioned to grant the request. Mr. Okerman seconded. Passed 7-0. Board discussion regarding renotifying the abutters. Ms. Prendergast motioned to have the abutters renotified. Mr. Breton seconded. Passed 7-0.
- Letter from Attorney Mason requesting to continue the Spatharos public hearing to December 17. Mr. Breton motioned to grant the request. Ms. Prendergast seconded. Passed 7-0.

Mr. Breton motioned to move Carr Landscaping, Clarke Farm Roundabout, Griffin Park to December 17 at 7:30 pm. Mr. Okerman seconded. Passed 7-0.

CITIZEN PETITIONS:

Mr. LoChiatto read five citizen petitions as follows:

Citizen Petition #1

Petition of Charles McMahon and others to see if the Town will vote to rezone parcels 11-C-800, 11-C-350, 11-C-300, 11-C-125, 11-C-100, 11-C-701 and 11-C-702 from the centerline of the existing Route 111 northerly a distance of 1200 feet from Professional Business and Technology to Business Commercial A. This will enable the parcels to be zoned in a manner consistent with the creation of the new Rt 111.

Citizen Petition #2

Helen Cookson and others do formally request a zoning change be perpetuated from the status of “rural” to “neighborhood business” for the following properties:

Lot #603 @ 157 Rt 28, Windham, NH 03087, owners: Robert and Helen Cookson

Lot #605 @ 159 Rt 28, Windham, NH 03087, owner: Angeline Denuccio

Lot #401 @ 151 Rt 28, Windham, NH 03087, owners: Christopher Paul and Maureen Kelleher

Citizen Petition #3

Andrew Lane and others petition for amendment to zoning ordinance to the Selectmen of the Town of Windham. The Town of Windham Zoning Ordinance regulating the Wetland and Watershed Protection District (“the Ordinance”) was enacted to preserve water resources and benefit public health, safety, and welfare. Clearly, the Ordinance did not intend to protect roadways, man-made pipes, and drainage culverts. The below amendment will not provide for an interruption in the delineation of a brook or

stream but alternatively will prevent the unintended consequence of protecting roads, man-made pipes, and drainage culverts.

The undersigned legal voters of the Town of Windham request that Section 601.2 of the Town of Windham Zoning Ordinance regulating the Wetland and Watershed Protection District and providing a definition for a brook or stream within the Town of Windham be amended as follows:

From: "Brook or Stream: A brook or stream is a scoured natural or artificial channel indicating periods of concentrated water flow that has a contributory drainage area of 10 acres or more containing a wetland as defined in Section 601.2 -Wetlands of this ordinance. Roads, drainage culverts, or other man-made features do not constitute an interruption in the delineation of a brook or stream.

To: "Brook or Stream: A brook or stream is a scoured natural or artificial channel indicating periods of concentrated water flow that has a contributory drainage area of 10 acres or more containing a wetland as defined in Section 601.2 -Wetlands of this ordinance. Roads, drainage culverts, or other man-made features do not constitute an interruption in the delineation of a brook or stream. Notwithstanding the foregoing, any water contained within a drainage culvert, man-made pipe, or other man-made feature is exempt from the setback requirements of Section 601.4.

Citizen Petition #4

Soterios Zaimes and others petition a proposed by-law will not allow political signs on public land but allow them on private property only.

Citizen Petition #5

Petition of Charles McMahon and others to see if the Town will vote to rezone property at Range Road and Route 111 identified as lots 18-L-480, 18-L-450, 18-L301, 18-L-400, 18-L-300, 18-L-303, 18-L-302, 18-L-310, 18-L-201 at 41, 43, 49, 53, 57, 59, 61, 63 and 67 Range Road from Professional Business and Technology District to Business Commercial District "A". This will enable the parcels to be zoned in a manner consistent with the creation of the new Route 111.

Mr. Turner discussed a citizen petition has been submitted a duplicate Planning Board item and it should be dropped if the board desires, the only difference is whether the Planning Board recommends or doesn't recommend. Board discussion regarding it appears to be the same language, similar to another amendment, Mr. Turner can ask for clarification from Attorney Campbell, are the citizen petitions different from amendments, not going to talk about amendments #9 potential rezoning of Range Road golf course to Delahuntys, and will go to public hearing the second meeting on January 14.

PUBLIC MATTERS:

Proposed Zoning Map Amendments

Amendment #5: Amend Zoning District Map: by rezoning of a portion of lot 8-B-3002, 140 Rockingham Road from Rural (residential) District to Neighborhood Business District from the center line of Rockingham to a line 650 feet easterly and parallel to the line of Rockingham Road, and to rezone the remaining portion of lot 8-B-3002 easterly of said line from Rural (residential) District to Residence District "B".

Mr. Turner described the zoning change and showed it on the map. Board discussion regarding the acreage of the Neighborhood Business district, and the lot is 43 acres with about ½ of it changing.

Public comment from Tom Case, 70 Mt Village Road, asked for clarification of the location of the lots,

it appears to be a big piece of land for neighborhood business. Board discussion regarding this is in response to citizen petition #2, and how much more neighborhood business do we need.

Public comment from Doug Mahoney, president of the Villages of Windham, concerns include traffic, wetland feeds, where would a road be placed? and concerned with extra driveways. Mr. Turner discussed the potential of curb cuts, setbacks, and secondary access.

Alan Daigneault, Villages of Windham, stated that there has been some traffic deaths along that area of Rt 28, and would the Board look at turning lanes or widening the road. Board discussion regarding a traffic study would be at the time of a proposal, and Rt 28 is a state highway and needs the state approval.

Chris Nickerson, Herbert Associates, showed a map of the area, are connecting Neighborhood Business Districts, approximately 18 acres will be neighborhood business zone, probably 10 acres is buildable, across the street is the Granite Oaks building, and driveways would probably be aligned.

Board discussion with Mr. Nickerson regarding why neighborhood business district, continuous with the neighborhood, lot of environmental constraints, how this affects the abutting neighborhood, amendment #7 is connected to this change, and the Board tabled amended #5.

Amendment #6: Amend Zoning District Map: by rezoning lot 8-B-6200, 154 Rockingham Road from Rural (residential) District to Neighborhood Business District.

Mr. Turner explained amendment #6 and showed it on the map, and this change would make continuous Neighborhood Business district.

Public comment from Doug Mahoney, Villages of Windham, discussed his concerns for curb cuts. Board discussion regarding having an internal road network from one curb cut, and there are wetlands which would make the lot hard to develop.

Alan Daigneault, Villages of Windham, asked about Conservation Commission input. Board responded that there would be.

Board discussion to table this amendment.

Amendment #7: Amend Zoning District Map: by rezoning landlocked property off Rockingham Road and Gordon Mountain Road, lot 8-B-6100 and lot 8-B-6150, from Rural (residential) District to Residential District "B".

Mr. Tuner explained the change and the access to land locked areas, it could have multi-family, he explained the abutting zoning, and he showed where the Town lands and easements are located.

Board discussion regarding access to the property from Villages of Windham, possibility of emergency gate, and the property is currently zoned rural.

Public comment from Tom Case, 70 Mt Village Road, stated the lots were discussed last year and were not put forward because more study was needed, and what information has been gathered to change the Board's mind? Board discussion that it fits with the surrounding zonings, without the change the land is unuseable, and the owner also pleaded his case more lengthly than before. Mr. Case said the Board

should do what is best for the Town, leave the front Residential B like at Lamplighter, and it is tough to get onto Rt 28 now.

Jeff Yenacco, owner of one of the parcels, stated he is in favor of the changes, this will keep consistency in the zoning, and it is the best use of those parcels.

Doug Mahoney, Villages of Windham, stated that the Villages is not concerned with the Neighborhood Business unless a used car lot can be a neighborhood business, not sure what will happen to their values, and make the land part of the conservation land. Board discussion that the Villages would have to vote on whether or not to allow an access, Conservation is not ready to purchase, and the issues are the same no matter the zoning.

Kristi St. Laurent, Planning Board Alternate, asked about the width of the access road. Mr. Nickerson, Herbert Associates, stated that their engineers that did subdivision of this area left 50' between the Villages and the Town owned land. Board discussion that a private road or driveway doesn't need to be 50' wide.

Nathaniel Chapman, Village of Windham, stated he moved to the Villages because it is private and rural, Villages probably won't approve a cut through to the properties, and there are a lot of trails on the land.

Jeff Yenacco stated he appreciates how Mr. Chapman feels as his family has lived in Windham for three generations, he knows that the trails are on his land, there has been a lot of growth in southern New Hampshire, he has accepted the changes, the Board is not approving a subdivision but just the zoning change.

Mr. Kolodziej motioned to move map amendment #5 to warrant as written. Mr. Breton seconded. Board discussion regarding concerns with wetland, leaving portion of the land rural, changes are consistent, and issues will come before the Board if there is an application. Passed 5-2. Ms. Prendergast and Ms. Skinner opposed.

Board discussion regarding consistent zoning, and there are access and wetland issues that will be addressed through the application process. Mr. Kolodziej motioned to move map amendment #6 to warrant as written. Mr. Breton seconded. Passed 7-0.

Board discussion that these have been discussed in workshops. Mr. Kolodziej motioned to move Map Amendment #7 to warrant as written. Mr. Breton seconded. Passed 5-2. Ms. Prendergast and Ms. Skinner opposed.

Amendment #8: Amend Zoning District Map: by rezoning property on Lowell Road south of Westchester Road and Cobbetts Pond Road, lots 20-E-250, 20-E-251, 20-E-252, 20-E-260, 20-E-270, 20-E-275 at #42 through #52 Lowell Road from Rural (residential) District to Business Commercial District "A" and lots 21-D-41, 21-D-42, 21-D-100, 21-D-101, 21-D-102, and southerly portion of 21-D-105 and westerly portion of 21-D-107 at #37 through #53 Lowell Road from Residential District "A" to Business Commercial District "A".

Mr. Turner explained the zoning change and showed it on the map. He discussed the several non-conforming businesses on Lowell Road granted by variance, and he explained the zoning in the area and which properties received variances. Board discussion regarding expanding to lot 275 and 250 because

of the clear delineation. Mr. LoChiatto read a letter from Mr. Cyr. Board discussion not rezoning lot 50, it was not the intent to rezone this lot, the legal ad can be clarified, should lots 21-D-41 and 42 be included, the wetland is a natural buffer, the land is undevelopable, look at these two lots in the future and leave them off for now. Mr. LoChiatto read a letter from Amy Spencer.

Public comment from Tom Case, 70 Mt. Village Road, stated he was confused about which lots were included, the Cyr lots are not included, and the other two lots should not be included or made to be Limited Industrial, the tank farm doesn't qualify as Commercial A, and the businesses are allowed by variance.

Jim Tierney, 96 Lowell Road, stated that he is in favor of the rezoning, whether the two lots are included or not only effect the buffer, and Neighborhood Business district would be more inline which could service the residents along Lowell Road and the schools, and there will also be a bike path.

Alan Carpenter, 8 Glenwood Road, stated that the neighborhood is residences with some non-conforming businesses, the three schools are on this road, do not need large trucks on this road, and Neighborhood Business district would be more appropriate.

Ross McLeod, Nottingham Road, stated this is imbedded within the Town, there is a very tight corner on Lowell Road, Commercial A is for the motoring public, Neighborhood Business makes more sense, need to connect land use planning and transportation planning, and this is a failure of planning.

Carol Pynn, Cobbett's Pond Road, stated she has a lot of concerns with these parcels becoming Commercial A, the traffic has increased along Cobbett's Pond Road as people avoid Rt 111, asked if a traffic study has been done, Commercial A is inappropriate, the school are on this road, there will be a bike path, it is a windy road, it is a historic road that has been compromised already, the road probably could not handle the traffic, 37 Lowell Road is a historical house built in 1810, she reviewed the zoning of each of the 14 properties involved, and Neighborhood Business would serve the area.

Russ Wilder, Birchwood Road, stated that it's more appropriate for Neighborhood Business district, it would fit better with the neighborhood, the Planning Board has more control with Neighborhood Business, and there are wetlands that need to be protected. Board discussion that they're not looking for large scale buildings.

Mr. McLeod discussed that Neighborhood Business is less detrimental to the neighborhood, and connect more of the lots.

Charles McMahan, Floral Street, asked would Neighborhood Business district makes what is currently there non-conforming? Mr. Turner stated the current business would fit into Neighborhood Business except for the tank farm, the ZBA granted a Commercial A variance, and will they lose some of the rights granted by variance? Board discussion regarding Commercial A vs Neighborhood Business, trying to control at the Planning Board level the use by variance, or does it sub come to it? Mr. McMahan asked about the expansion of the tank farm, this does not change what the Spencer family wants to do, and does it increase their tax liability. Board response that the property would need a variance regardless of the zoning, and Neighborhood Business district would allow the Spencer's to live in their home. Rex Norman, Town Assessor, stated if it became a business and caretaker home it would be taxed as a business. Board discussion regarding studying what the variances actually say, make it Neighborhood Business district, move it to the next public hearing, and it does need a second look.

Karl Dubay, Telo Road, stated he agrees to move it to another meeting, he discussed the differences in setbacks between the zones, and he thinks either zone works. Board discussion that Mr. Turner should get an answer from Attorney Campbell regarding what the zoning change to Neighborhood Business would do to those lots with variances, and does the variance go away?

Mr. Tierney stated the variance does go with the property, the only reason the variance would go away is if the owner abandons the business, he reviewed the variance process for those properties that received variances, the current uses are allowed in Neighborhood Business, and the lighting requirements for Neighborhood Business district would be better for this area.

Board discussion regarding going to second public hearing as Neighborhood Business, and Howie Glynn's property is split zoning.

Mr. Breton motioned to move Map Amendment #8 to a second public hearing and change the proposed Commercial A rezoning to Neighborhood Business and to exclude 21-D-42 and 21-D-41. Ms. Post seconded. Passed 7-0.

Ms. Prendergast motioned to remove the word "residential" in parentheses anywhere it says Rural. Ms. Skinner seconded. Passed 7-0.

Amendment #9: Amend the Zoning Map: by rezoning property at Range Road and Route 111, lots 18-L-480, 18-L-450, 18-L-301, 18-L-400, 18-L-300, 18-L-303, 18-L-302, 18-L-310, 18-L-201 at 41, 43, 49, 53, 57, 59, 61, 63, and 67 Range Road from Professional Business and Technology District to Business Commercial District "A".

Board discussion that the Board discussed dropping this amendment earlier in the evening because of a citizen's petition. Mr. LoChiatto read the amendment.

Mr. Kolodziej motioned to not move Map Amendment #9 to warrant based on a citizens petitions with the same language as per Town legal council opinion. Mr. Breton seconded. Kristie St. Laurent, Planning Board Alternate, stated she didn't think it was clear that the Planning Board's amendment should be dropped, and the citizen petition cannot be altered and the amendment can be. Board discussion that Attorney Campbell says having both will confuse the voters and the Planning Board should drop their amendment. Passed 7-0.

Proposed Zoning Ordinance Amendments:

Amendment #1: Amend the Customary Home Occupation section 602.1.6:

Section 1) Amend section 200 Definitions by deleting the existing definition of Customary Home Occupation and inserting the following language: Customary Home Occupation – An occupation for gain or support conducted entirely within the dwelling unit. It is clearly a secondary use of the property, which does not adversely affect the residential character of the neighborhood. It is in compliance with the criteria established for a Customary Home Occupation.

Section 2) Amend section 602.1.6 Customary Home Occupation by deleting the existing language and inserting new language

Mr. Turner explained the reason for the change. Mr. Turner read the current definition for home occupation and the new proposed definition, there has not been much change but it has been updated, and specific occupations are not listed but certain criteria needs to be met and appropriate reviews need to be done.

Board discussion regarding the numbering scheme, and add a subheading for Criteria.

Public comment from Majorie Dastous, 22 Bear Hill Road, asked the Board to support the changes because the current version is outdated, she then outlined the issues she had with the ZBA interpretation of the home occupation she wanted, the new definition and criteria clears up interpretation, and specific occupations will not be listed. Mrs. Dastous was thanked for her help in this update of the ordinance.

Public comment from Carl Henyzl, 110 Kendall Pond Road, stated he like the changes except for the change of “within the dwelling unit” to “primarily on the premise,” and many home occupations do things outside of the home.

Board discussion regarding Mr. Henyzel’s suggestion, and use “primarily on the premise.” Mrs. Dastous agreed with the change. Board consensus that this is a minor change.

Mr. Breton motioned to move to the Amendment #1 to warrant with the following changes: 1) Adding “Criteria” as a heading with numbering; and 2) Change “within the dwelling unit” to “primarily on the premise.” Mr. Kolodziej seconded. Passed 7-0.

Amendment #2: 704.4 Limitations on Parking

Section 1) Amend section 704.4 by adding a new section regarding recreational vehicles or recreational campers.

Section 2) Amend section 708 and 709 Motorized Recreational vehicles and Campers by deleting these sections if the above amendment passes.

Section 3) Amend section 200 Definitions by adding a new definition for recreational vehicle.

Mr. Turner discussed that this would bring the “limitations on parking” to one place in the ordinance, and have one definition of recreational vehicles. Mr. Turner read the new sections, he feels this is a clarification and easier to find. Board discussion regarding parking recreational vehicles in the side yards, and most people park their campers off their driveways.

Public comment from Jim Tierney asked for clarification of “non-residential”, and good idea to get rid of the side yard. Board discussion regarding restrictions from the front yard, park the recreation vehicle as far back as the house or the minimum setback, homeowners could go for a variance, changes are minor, what should the minor changes be, and what about those that want to live in their camper for more than 30 days.

Mr. Kolodziej motioned to move Amendment #2 to Town warrant with the following modifications: 1) Change section 704.4.5.3 may not occupy any front yard; and 2) Section 704.4.5.1 change “non-residential” to “storage.” Mr. Breton seconded. Passed 7-0.

Mr. Kolodziej motioned to adjourn. Ms. Skinner seconded. Passed 7-0. Meeting adjourned at 10:40 pm.

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