



OLD VALUES - NEW HORIZONS
COMMUNITY DEVELOPMENT

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Planning Board Minutes
January 11, 2012

Roll Call:

Ruth-Ellen Post, Chairwoman-Excused	Ross McLeod, Selectman Member, Excused
Margaret Crisler, Vice-Chair-Present	Kathleen DiFruscia, Selectman Alternate-Seated 7:10 pm
Pam Skinner, Member-Present	Lee Maloney, Alternate- Excused
Carolyn Webber, Member-Present	Vanessa Nysten, Alternate-Present
Jonathan Sycamore, Member-Present	Sy Wrenn, Alternate-Present
Kristi St. Laurent, Member-Seated 7:07 pm	

Staff:

Laura Scott, Director of Community Development
Mimi Kolodziej, Planning Assistant

Call to Order/Attendance/Pledge of Allegiance:

Vice-Chair Crisler called the meeting to order at 7:03 pm followed by attendance and the Pledge of Allegiance.

Vice-Chair Crisler, who chaired the meeting in place of Chairwoman Post, appointed Mr. Wrenn to sit for Chairwoman Post and Ms. Nysten to be seated for Ms. St. Laurent.

Public Hearing –Citizen Petitions 2012 Town Meeting Zoning Amendments

Citizen’s Petition #5

To amend paragraph 1 of Section 708.3 of the zoning ordinance, which is the section that defines the term junk yard, to read as follows: “Old or scrap brass, copper, metal, ropes, rags, batteries, paper, trash, tires, rubber, debris, motors, motor parts, engines, engine parts, plastic, or other manmade materials; or

To amend Section 708.3 of the zoning ordinance to define a non commercial junk yard as follows: “Non-commercial Junk_Yard: A property used for the storage of junk not intended for resale or commercial use in a quantity equal in bulk to 10 cubic yards or more.”

Ms. Skinner read Citizen’s Petition #5 into the record.

Mr. Mark Sneider, 5 Delway Rd, explained that this petition was brought forward to expand the current definition of “junk” and believes it benefits the Town and conforms to the intent and purpose of the State law.

Ms. St. Laurent was seated at 7:07 pm.

Ms. Webber read from Attorney Campbell’s memo in which he recommends that the Planning Board disapprove this proposal, that the proposed language could be outside the authority given to towns, and the adoption of it could jeopardize enforcement action.

Mr. Sneider listed materials that are not noted in the Town’s definition. Mr. Wrenn stated that in Section 708.3 those materials are listed. Mr. Sneider thinks the new definition is more precise.

Vice-Chair Crisler opened the Hearing to the Public.

Mr. Justin Belair, 13 Galway Rd, stated that the State's RSA is limited to regulating areas adjacent to State roads and has no authority over what is found in our Town. Therefore, he thinks Attorney Campbell's statements are unfounded.

Vice-Chair Crisler closed the Hearing to the Public. Vice-Chair Crisler re-opened the Hearing to the Public.

Mr. Sneider explained that an additional proposed change was to the quantity of junk from 2 or more motor vehicles to a bulk equal to 10 cubic yards or more; a more precise definition he thinks.

Ms. DiFruscia was seated at 7:10 pm.

Mr. Phil LoChiatto, 5 Faith Rd, a general contractor, often ends up at the end of a job with left over materials that he organizes in his yard for later use. Is he now a junk yard? He thinks this proposal is over-reaching and infringes on property rights that everyone should enjoy.

Mr. Larry Blanchette, 2 Mulberry St, is confused. Is he allowed 10 cubic yards of each material? There are many old trucks/trailers around waiting to be rebuilt that may be antiques. Why would they offend?

Mr. Dennis Senibaldi, resident contractor, is in the demo business and ends up with materials at his home. He is bothered by the reference to "other manmade materials." That is so inclusive and restrictive and does not seem to be the intent of NH. He asked what the impetus was that initiated this petition.

Mr. Chuck Este, Londonderry Rd, asked where does a junk car end and Classic car begin. He has old cars that are down back on his 9 acres that, now that he is retired, is working on. Ms. Scott clarified that the current Ordinance Section 708.10 has an exemption for antique motor vehicles cars that are in the process of being restored.

Mr. Dennis Root, 15 First St, thinks people move to NH because they like it they way it is, and then they want to change it. Why don't they move back?

Mr. Brian Bauchman thinks the petitioner, a neighbor of his, is bringing the petition against him. They have frequently complained about his yard and thinks it is getting out of hand.

Mr. Sneider stated the petition is not directed against anyone. It simply provides a clearer definition of junk and provides a more accurate means of assessment.

Vice-Chair Crisler closed the Hearing to the Public.

Ms. Webber does not support the Petition. The Town's taxes are high enough without people being told what they can and cannot do with their property.

Ms. St. Laurent noted that both Junk Yard definitions do not determine if the "junk" is at the primary residence. Also, the Board had concern about how to enforce the Ordinance and so felt that the size of 2 cars would be easier to determine than 10 cubic yards. Ms. Scott said there are no legal, commercial junk yards in Town. This would just be changing the current definition.

Ms. DiFruscia thinks this Petition is overreaching. There is currently statutory law in place. If the petitioner wants to make some changes, he should look at the RSA's at the legislative level rather than changing the

Town's laws. What might appear as junk to someone may be necessary for someone else's work. There is a fine balance and this Petition is legally overreaching, and she cannot support it.

Ms. Webber has an old car body in her woods; she finds this "woods art," which tells a story, very exciting.

Mr. Sycamore asked if the State can only regulate junk yards along the Interstate. Ms. Scott said that the Town has the authority to regulate them locally. Our state Ordinance should not conflict with the State.

Vice-Chair Crisler thinks the proposed changes and the complete definition are very similar. The only difference is manmade materials and plastics. The Town's Ordinance Section 708 regulates junk yards very completely.

Ms. Webber motioned to not recommend Citizen's Petition #5. Mr. Wrenn seconded. Motion passed: 7-0.

Citizen's Petition #6: To amend Section 200 of the zoning ordinance by adding the following:
Commercial Vehicle: Shall Mean any vehicle used or intended to be used (1) to transport goods, commodities, merchandise, produce and freight or (2) used or intended to be used in construction, industry, farming, towing, logging, automotive or other commercial businesses or enterprises. Commercial vehicles shall include, without limitation, trucks, buses, bulldozers, backhoes, tractors, excavators, trailers, trucks fitted with cranes, trucks fitted with air compressors, trucks fitted with welding equipment, trucks fitted with tanks or similar equipment. Commercial vehicles shall also include, without limitation, motorized and non-motorized dumpsters, storage units, tool lockers and trailers.

Ms. Skinner read Citizen's Petition #6 into the record.

Mr. Sneider said there is no definition of "Commercial Vehicle" in the Ordinance, and he thinks the Town needs one. This stems from a Zoning action that took the position that a large piece of equipment does not constitute a commercial vehicle. Therefore, since construction equipment is not classified as a commercial vehicle, 100 of them could be allowed on a property.

Ms. Scott explained Attorney Campbell's review which agrees there is no definition of commercial vehicle. It was a code enforcement determination that an excavator was not a commercial vehicle.

Vice-chair Crisler opened the Hearing to the Public.

Mr. Joel Dubay, Beacon Hill Rd, does not understand the phrase "intended to be used." He currently owns a backhoe and previously owned several other pieces of equipment that he never intended to use commercially. He likes to dig holes in his yard. Whose "intention" is referenced; the owner, the manufacturer,... He listed several pieces of equipment that he owns and uses occasionally, never commercially. He asked for clarity on the definitions.

Mr. Shayne Gendron, 24 Bridle Bridge Rd, wonders why the Town needs to add the definition at all. The Town relies heavily on local equipment to plow Town roads. It supports public health and safety, one of the purposes of the Zoning. He is against adding a definition of commercial vehicle and thinks the Town needs to support those in our community who make a living with the vehicles.

Mr. Chuck Terry, owner of CTC Envision Home Theater, owns 2 trucks over 8,000 pounds which he occasionally takes home. He carries expensive equipment in them and can't trust leaving them in a parking lot. He works with many who have ladder racks on their trucks and thinks it would be very inconvenient for them to leave their trucks and then get a ride home.

Mr. Larry Blanchette thinks this proposal might be a conflict of interest with the State. The State is interested in starting small farms back up and now the proposal suggests the Town cannot have tractors.

Mr. LoChiatto said the State has a commercial vehicle definition. A small Ford F150 is just a few hundred pounds less than the petition's 8,000 pound standard. He finds the proposal far too restrictive. If he loads his truck over the limit, is someone going to come after him? Windham is referred to as the Rural Oasis. Isn't farming and farm tractors part of the rural image. Since when is a commercial vehicle non-motorized, like a dumpster?

Mr. Justin Belair thinks the definition is non-restrictive. It may not be the best, but it is a start. Whether the State has a definition has nothing to do with the Town. It's just a definition.

Mr. Brian Bauchman stated that his backhoe and excavator did not belong to him. They were borrowed for a long time.

Mr. Jason Steven, 71 Castle Hill Rd, thinks the definition lacks certainness. If adopted, enforcement would be arbitrary, inconsistent, and far-reaching. Any vehicle with a sign on it would fall into this classification. It could have negative effects on many Town people and effect the local economy.

Mr. Dubay stated that Petition #7 makes the definition in Petition #6 very restrictive.

Mr. Senibaldi said that Petition #7 would make his pickup truck, which he's owned for 10 years, too big to park in his driveway. He's still trying to figure out what a motorized dumpster is. This definition covers a multitude of businesses. Many small businesses cannot afford a truck rental space. This definition also does not allow portable storage units.

Mr. Sneider thinks Attorney Campbell's reference to the State code has nothing to do with defining commercial vehicles. He said the proposal is defining what a commercial vehicle is, not saying they are illegal. He wants to define it so that 100 backhoes, for example, won't be allowed on someone's property. He offered GVW for various trucks and said the focus should be on how commercial vehicles should be permitted in residential areas.

Mr. Senibaldi said the vehicles Mr. Sneider quoted are "girlie" vehicles. Many of the trucks mentioned have different classifications. Mr. Sneider agreed.

Vice-chair Crisler closed the Hearing to the Public.

Ms. Scott stated that the Board currently has a Warrant Article about parking of Commercial Vehicles. There is a regulation in zoning about that. There is potentially a conflict, because the Board has defined it with axels and registration and inspection. It was not the Board's intention to regulate equipment. Vice-Chair Crisler read the proposed Warrant Article.

Vice-Chair Crisler closed the Hearing to the Public.

Mr. Wrenn said that the Board's Warrant Article with a GVW of 12,000 tried to incorporate vehicles most people would have. He agrees with Attorney Campbell that the Petition's definition is too broad and encompassing.

Ms. DiFruscia agrees with Mr. Sneider that we do need a definition. She understands his concerns, but thinks the Citizen's Petition does not address those concerns. She hopes he will continue to work on this

definition and return to the Board with a more reasonable definition for those who need their vehicles for their daily work, but are not using their property for storing equipment to be used off-site.

Ms. Webber motioned to not recommend Petition #6. Seconded by Mr. Wrenn.

Mr. Sycamore confirmed with Ms. Scott that this topic will be on the Board's 2012 work list.

Motion passed: 7-0.

Citizen's Petition #7:

To amend the zoning ordinance by inserting the following Section 704.2.7 to read:

In the Residence Districts A, B, C and Rural District there may be the outdoor parking of one Commercial Vehicle used by a full time resident at the property subject to the following:

704.2.7.1 The Commercial Vehicle shall not exceed more than 8000 pounds gross vehicle weight (GVW)

704.2.7.2 Where a rear yard is reasonably accessible or a side yard is of sufficient size to accommodate the Commercial Vehicle, the Commercial Vehicle shall not be stored in the front yard of the lot.

704.2.7.3 Commercial Vehicles performing work on a lot pursuant to a valid permit issued by the Town of Windham may remain temporarily on the lot during the construction process.

704.2.7.4 Dumpsters and storage units shall be permitted only on a temporary basis not to exceed, in the aggregate, 60 days in a given calendar year.

Ms. Skinner read Citizen's Petition into the record.

Mr. Sneider asked what the Board does with unregistered vehicles and vehicles that cannot be registered; for example, tractors-vehicles that cannot be driven on the road. Ms. Scott explained that the Town waits for code enforcement complaints. There are two situations: One where the vehicle is for personal use and one where it is part of the person's business. They have been addressed on a case by case basis. The intent of the Board was to keep the Ordinance for registered vehicles with axels. The Town allows one unregistered vehicle on a property.

Vice-Chair Crisler opened the Hearing to the Public.

Mr. Belair said they had tried to take a balance approach and not be overreaching. This petition goes hand in hand with #6 and is not meant to limit anyone's ability to make an honest living and park overnight. They simply meant to tighten up the Ordinance.

Mr. Blanchette noted that Windham will not hire an 8,000 pound truck to plow for them, because they are too small. Now the plowing would have to be done by out of towners.

Mr. LoChiatto asked if our Town has become so unbearable that we need to change it. If I want to buy a larger truck, do I now need to buy another vehicle to drive to it at its storage place?

Mr. Dubay thinks this is a gripe between neighbors. The intent may not be to prevent him from his machines, but a new neighbor may not like it. His previous answer about "intended" has not been answered and the definition does not address it. Sixty days is not enough if you're doing a major house renovation. Ms. Scott located two places in the zoning regulations about the unregistered vehicles. It will be deleted from one place and remain in the parking regulations section.

Ms. Senibaldi asked if the Board will discuss vehicle weight in the future; Yes. He said that the average truck for anyone in a small business is between 10-16 GVW. The 60 day allowance for a dumpster is

unreasonable. It takes 6-8 months to build a house and often longer when doing a roof. He urged the Board not to support this Petition #7.

Mr. Bauchman who has received approval to have 3 vehicles outside and then to build a garage for them thinks this an argument between neighbors.

Vice-Chair Crisler closed the Public Hearing.

Ms. Webber read from Attorney Campbell's memo where it stated, "...I deem it to be unenforceable provisions."

Ms. Webber motioned to not support Petition #7. Seconded by Mr. Wrenn.

Ms. DiFruscia urged the concerned people to come to the Board and work with them to develop a fair, reasonable, and balanced proposal for all parties. She does find it somewhat overreaching.

Vice-Chair Crisler thought it is unfortunate that the petition could not be modified. There is a lot of value in it.

Motion passed: 7-0.

Citizen's Petition #8:

To amend Section 710.2 of the zoning ordinance, which is the section that defines fence, to read as follows: "Fence: A manmade barrier or structure of any material or combination of materials erected anywhere on a lot for the purpose of (1) enclosing or separating all or any portion of a lot or (2) shielding, concealing, hiding or obstructing the view of all or any portion of a lot."

Ms. Skinner read Citizen's Petition #8 into the record.

Mr. Sneider said this is not a dispute between neighbors, but an inconsistent enforcement of the code. It is a question of the lack of definition that provides standards. Consistency allows due process. Due process insists on no vagueness. He read Section 710.2 the definition of fence. He suggested changing the definition to one taken from the City of Manchester. The second portion of his new definition is taken from RSA 476.

Ms. Scott clarified that Staff and the ZBA both determined that a tarp is not a fence.

Vice-Chair Crisler opened the Hearing to the Public.

Mr. Phil LoChiatto said if the Town is taking an Ordinance from the City of Manchester are we to become the "Urban Oasis?" He thinks the tarp is an issue between neighbors and is not an issue for the Town. He does not support it.

Mr. Dubay said a better definition is needed to not include every structure erected on a lot; from rock walls around gardens to fairy houses built by his daughter.

Mr. Senibaldi said that at one time he put up a tent for a wedding which would violate this Ordinance. Draping his wet camping tarps could be considered a violation. He does not support the Petition.

Mr. Belair thinks the definitions are being read to prohibit. This is just a definition to provide clarity. The Code is already in existence.

Mr. Gendron thinks the definition is too broad; for example, “any material.” It is being restrictive when the Town already has a fence Ordinance. Does he really have to get a permit to put up a shielding so his ballplaying kids don’t hit balls into the neighbor’s yard?

Mr. Dubay thinks the definition is too broad and anyone could call you out on it.

Mr. LoChiatto disagrees with Mr. Belair. Yes, it is just a definition, but once it is defined and then applied to the Ordinance the Ordinance then becomes overly restrictive. He urged the Board not to support.

Mr. Sneider replied that a shed needs a permit anyway. Recreation limits a 20 ft. high barrier on ball hitting or paintball shields. The public is thinking too small. What about an 80 ft high barrier with a hole in it or one you could walk around. Precision is needed in legal language. Define a fence and get a permit. Easy.

Vice-chair Crisler closed the Hearing to the Public.

Ms. DiFruscia thinks the Citizen’s Petition is not satisfactory; it needs work. She thinks the vagueness of the language will cause problems with enforceability. The Board can work on what the Town has under Section 710.2.

Ms. DiFruscia motioned to not support Citizen’s Petition #8. Seconded by Mr. Wrenn.

Mr. Sycamore thinks the Citizen’s Petition #8 is less vague than what is currently in place and is a half step forward. He does have a problem with temporary fences.

Ms. Scott said that recreational fencing applies to sports courts and it must meet Planning Board approval. At this time, decisions are case specific. It is difficult to create a one size fits all ordinance.

Vice-Chair Crisler thinks a better definition is needed.

Motion passed: 6-1. Mr. Sycamore opposed.

Vice-Chair Crisler called a recess and reconvened the meeting at 9:00 pm.

2012 Town Meeting:

Review Warrant Order and Language

Ms. Scott stated that she made the edits from the last Planning Board meeting and Attorney Campbell has signed off on them. All votes from the recent meetings were checked for accuracy, and no errors were found. The Board does need to address the term “secondary road” which is used in WFH but the term has been removed from the subdivision regulations. Ms. Scott said that maps for the multi-zone vote will be available at Town Hall, the Library, the Planning Department and at the voting location.

The Board discussed the following edits with Ms. Scott and agreed to the following changes as per her recommendation:

- Replace the term “secondary road” on pages 4 and 8 with Residential I and Residential II Roads which is located in the definitions section and under Section 619.7.6.3 and wherever else it appears in the Ordinance
- Amendment #1 – Under (A.) change the term “for grammatical” to “due to redundancy”
- Amendment #4 – Add the phrase “provisions of the…” after the second word
- Amendment #6- Under (A) Start the sentence with “Removing” and in parentheses add (and B); move it to 617 renumbering it accordingly; also delete the first “Commercial”

- Amendment #6 – Edit (D.) to read Section 618.6 instead of 618.3
- Amendment #13- Under (F) replace (9) with (9,12)
- Article #4 – replace Amendment in the sub-titles with Citizens Petition and change the vote of Citizens Petition #1 to read 5-1
- Amendment #3 – Correct the spelling of “District”

Staff will address numerous numbering issues and correct them.

The Board discussed apparent discrepancies between the current version of Amendment #9 and a previous version where Attorney Campbell recommended different language and further discussion occurred regarding statutory timing ramifications.

On Jan 4, 2012 Ms. Scott advised the Board that there will not be a lapse in parking regulations. Attorney Campbell advised the Board that there will be a lapse in parking regulations. The Planning Board asked Ms. Scott to post the parking regulations for Public Hearing so there will not be a lapse. Ms. Scott agreed.

Ms. DiFruscia requested that any communications between Attorney Campbell and Ms. Scott regarding Planning Board concerns should be copied to the Planning Board Chair.

Outreach/Public Education Ideas/Discussion

Ms. Scott presented the Board a list of topics that Staff and Board could write articles about for the paper as a public outreach and education service. Vice-Chair Crisler suggested that the Board consider it over the week and bring their suggestions to the next Board meeting and that she and Mr. Sycamore would write about WFH.

Ms. Skinner motioned and Ms. Webber seconded to reconsider the minutes of November 30, 2011. Motion passed: 7-0.

Ms. Webber motioned and Mr. Sycamore seconded to approve the minutes of November 30, 2011 as amended. Motion passed: 5-0-2. Vice-Chair Crisler and Ms. DiFruscia abstained.

2012 Board Proactive Work Items

2012 Planning Board Work List and Schedule

Ms. Webber would like to see one list and would like the Planning Board to prioritize their 2013 list. Ms. Scott said she prioritized the current list according to a deadline schedule. Ms. Webber would like to see discussion of “Structure” and “Commercial Motor Vehicles” under definitions. Mr. Sycamore suggested removing “Yard Sales” and the Board agreed. Ms. Skinner recommended removing “Cell Towers” for a year. Ms. DiFruscia said, regarding the Keach-Nordstrom WWPDP study, that it was decided it was acceptable; and so that item should be removed from the list.

The Master Plan Implementation discussion was moved to the 1/18 meeting, and Ms. Scott will attempt to move the Design Review Workshop to the 2/15 meeting.

Liaison Reports: Not addressed

Old/New Business: 2 Winter Street, the Alpaca Farm, is scheduled for the 2/1 meeting.

Adjournment:

Mr. Sycamore motioned and Ms. Webber seconded to adjourn the meeting. Motion passed: 7-0.

The meeting adjourned at 11:10 pm.

These minutes are respectfully submitted for your approval by Mimi Kolodziej.