

Planning Board Meeting
10/15/09

PLANNING BOARD PRESENT: Sherri Dill, Marty Jackson, Shawn Brown, Dean Bennett and Linda Hardesty. Town Council also present.

STAFF PRESENT: Melissa Doane, Charles Norburg, CEO and Virginia Oakes as note taker

PUBLIC PRESENT:

OPEN MEETING: Chairperson Hardesty opened meeting at 6:40 p.m.

REVIEW OF MINUTES: Dean Bennett motioned to accept the 8/20/09 minutes as written. Sherri Dill seconded the motion. Motion carried.

CITIZENS REQUEST: None

NEW BUSINESS: None

UNFINISHED BUSINESS: None

OTHER BUSINESS: Chairperson Hardesty thanked Town Council for coming to discuss proposed Land Use Ordinance. Dean Bennett explained that there are 7 sections to the Land Use Ordinance and would give a general description and explanation of each section. He further encouraged Town Council to ask question or give comments for each section.

Dean explained that of the 7 sections, 4 are requirements out of State law. They are things the Town needs to have in order to have a legal stand point. Every ordinance needs to have a title, authority, purpose; it needs to be able to be referenced by section, an appeal process, severability clause, a clear articulated way by how it can change. Section one is general provisions which includes the above listed. The purpose of the ordinance comes out of the comprehensive planning process and it's generalities that come from the Comprehensive Plan. He asked Council to note number 7, "Protect the property values by balancing the rights of land owners to use their land and the corresponding right of abutters to use their property" that is an important aspect of this ordinance. Number 9, establishing standards and procedures is very important too, because if the Town should adopt this ordinance, it's an entirely different world than what the Town has had in the past. It's a world that needs organization, documentation and references. The Town is going from a general, "this is how we do things", to actually tying approvals to projects that have to meet specific criteria and if challenged at any point and time, has to be able to defend the decision. The way this is done is to have a clear record of the process taken, review the application, performance standards and the findings made so that the Planning Board and Code Enforcement officer can stand in front of a court room and explain how the decision was made.

Applicability covers all land areas and structures that are not in the shore land zone. Shore land zoning is regulated by a separate document. Page 3-G amendments is

important, providing the steps for changing this ordinance. There are stipulations, public notices, and public hearings. In working this ordinance through, it is important to tell as many people as possible what is being done. The functional aspect of posting agendas the record keeping and there is a clear time frame that the applicant has to act to get on the agenda. Dean referred to page 4-H which called for an annual administrative review which requires that every review authority under this ordinance annually review this ordinance and site problems or things that need to be addressed to keep it representative of the Town so that the ordinance doesn't become stagnant. Dean also addressed the section titled "Effective Date". He explained that what will need to happen is that the Town will need to go through the existing ordinances, list and reference the ordinances that the Land Use Ordinance will replace.

Dean went on to explain Section 2 which addresses non conforming structures, non conforming uses and non conforming uses of structures. He believes it is the most important aspect of the ordinance as it can cause more problems and grief than any other part of the ordinance. Non conformity by its nature is something that is no longer legal. You can have a non conforming structure and that structure may take up more of the lot than allowed. It might be too close to a property line than what is currently allowed. Non conforming use is using a lot for something that is no longer allowed in that district on the effective date of the ordinance. That use can't grow or get bigger and you can't have more of them going in. The last is non conforming uses of structures. You have a use within a building and the building is fine as it sits but the use inside may not be conforming. Any use that has been legally permitted in the past retains it's legality under this ordinance. The non conforming structure section says that a non conforming structure that is regarding the relationship of the building to the lot to setbacks. Some aspect of that structure cannot be replicated with the passage of this ordinance. A non conforming structure cannot become more non conforming. An example would be if a structure is too close to the property line, that structure cannot be expanded any closer to that property line. If someone has a legal running junk yard under the old regulations, then it is legal under the new ordinance. As well as if they have an illegal running junk yard, it is illegal under the new ordinance. The legal junk yard can continue in a district that no longer allows junk yards. The use of the land is junk yard. That junk yard cannot occupy a greater area of land on that lot. It can't expand. It can continue to operate, it can be sold, but it can't increase its non conformity.

Non conforming use of structures: if you had a building with 2 uses in it, like a mini mall, one building with 2 businesses in it, one of them is consistent with the new ordinance and one is not, now you have a non conforming use in an existing structure. That non conforming use can't expand within the structure. But the conforming use can continue. There are provisions in the new ordinance which allow that non conforming use to be replaced with another non conforming use if the new use is less non conforming.

Manager Doane asked if it was correct that a property that is non conforming to this ordinance but conforming in the present ordinance, when this new ordinance is adopted, people are not going to be asked to comply with the new ordinance. However, they can't make any changes to that property that would make it nonconforming. Dean agreed that that was correct. Manager Doane further added that if they sell the property and it's non conforming then change in ownership doesn't change the non conformity. She also asked about what would happen with home occupations that are in residential districts. Dean

explained that a home occupation is different than a business. A business is for commercial purposes, profit, its goods bought and sold, services rendered, employees are hired to conduct business and generate profit, you may act as a retailer or wholesaler, or you may be manufacturing things. This ordinance is designed so that what has happened in Bradley in residential areas, with businesses popping up next to houses stops. This ordinance says the Town is not going to deprive you of the right to have an occupation in a residential area. That occupation has to look, see and smell like a house and it's going to be limited to its operation so that the impact is not going to be that of a business. You do that by limiting employees, limit people living there, and limit the service base. This would be a place where you would call for an appointment. With home occupation, you can meet those provisions with a lot of businesses that are in Bradley. It distinguishes between businesses and occupations that can happen within homes as it doesn't negatively impact the neighbors. This ordinance will incubate small businesses.

Oscar Emerson explained that years ago they made a revision in the Land Use Ordinance. This addressed non conforming structures not becoming more non conforming which is an accepted general standard with land use ordinances. In the village there was a structure that was clearly non conforming. The building was very close to the road. The structure was large with angle points. They didn't want to go any closer to the road but run parallel with the road and stay within the setback that they were at. They wanted to square up their porch. After much discussion they came to the conclusion that the structure was already 15 feet away from the right of way and there is another building where the right of way is actually carved out around the building because it lotted toward the road, and we allowed this to occur, we described our revised section of the ordinance so that there was a limit, they couldn't keep going but for somebody to have the opportunity to expand a deck or something like that. At the time we felt that was reasonable and that there was a demand for that particular caveat. He asked that the Board take that into consideration.

Dean responded to Oscar by saying that he had been a Code Enforcement Officer for years and interpreted it as the owner of the structure had a legal right to be a certain distance from the side lines, they have a legal right to be a certain distance from the road as long as they don't increase those setbacks, which that didn't do. There are lots of case law that say, "no". Also lawyer opinions have been that that increases the non conformity. That affects many things, it's a philosophical point and if that's what the Town wants to do then, they should add a caveat in this section, and tweak the words that say shall not increase the aspects of that non conformity. Ultimately Charles is going to be in that position to make that determination. Charles added that courts have ruled that even though it's not coming any closer to the road, it is increasing the non conformity by increasing the area or volume that is in nonconformity. His feeling is that it has to be put into the ordinance that that is allowable. Dean added that if the Town is silent on it and it's challenged it won't work. It is a decision the Town needs to make, either they are going to allow that concept or not allow it and get out of the case by case basis because that is when you get into trouble and that is an awful position to put the Code Enforcement Officer in. Charles commented that that is why there is a square footage threshold of 524 square feet. Dean replied that maybe not even do that and to just allow that to happen because then if there are limitations on size then the question is going to be, where did that percentage come from. If later its problematic, change it. Oscar asked if there was a statutory time if they discontinued that use. Dean answered that it was 12

months. Oscar asked about C2, should any structure exclusive of the foundation be destroyed or damaged, exclusive of a planned demolition, said structure can be rebuilt on the existing foundation the dimensions of the structure which was destroyed provided rebuilding begun in the allotted time. What if someone has a catastrophic fire and has a stone foundation and the foundation didn't get destroyed. He felt that that would be hard on a person that wanted to rebuild within one year and had lost their foundation. He asked what the rationale was for that. Dean responded that its to avoid arguing of what was there and what they had rights to. So ideally, you have to be able to go out onto the face of the earth and be able to say, "here are the parameters, here are the limitations", and tie it to something. That foundation could be a gravel pad, but you have to have some kind of dimension or beginning. Oscar commented about the section titled "Non Conforming Lots of Record". Most municipalities say that if you have 2, half acre parcels, if you bought them and they were continuous ownership, then you automatically had one lot. A lot of people stumble into this because they thought they were buying 2 lots. 5 years down the road they find out that they can't build a second camp for their parents or whatever. Oscar likes the section because it lets the 2 lots stay 2 lots.

Manager Doane made notice of a few housekeeping details. Dean moved on to Section 3. The Comprehensive Plan lays out a strategy which divides the Town into growth areas and rural areas. It also identifies, specifically, where they exist. The area is referenced on the land use map which is part of this ordinance. To make any changes to this you would have to amend your comprehensive plan. He explained that interpretation of district boundaries was important. It basically says that when you go out on any zoning line you ought to be able to touch it and try to avoid at all cost running zoning lines through peoples properties. It's important to stick roadways, railroads and property lines. Oscar pointed out that he remembers many discussions regarding having mixed districts on certain portions of route 178. With a road that is state maintained, it seems the Town should have mixed district right up and down the whole road. According to the map only a portion in the middle is allotted for mixed district. Dean explained that the State of Maine says that doing that is creating sprawl and can slow down traffic. It is in the Comprehensive Plan and when this passes, the Town should look at amending that section of the Comprehensive Plan.

Dean addressed Section 4 which is schedule of uses. He explained that businesses with greater impact on the surrounding area go before the Planning Board because then there are agendas and public hearings. Manager Doane asked about towers being only in rural areas. Dean explained that there is usually a parameter to avoid damaging homes. Oscar asked about automotive sales being allowed in a residential district but not a beauty shop. Dean explained that a beauty shop uses a lot of water.

It was agreed that the remainder of the ordinance could be gone over with the Town Council at the next regular Planning Board meeting.

NEXT MEETING: November 19th, 2009 @ 6:30

ADJOURN: Motion to adjourn at 8:15 p.m.