

TOWN OF SUTTON
Zoning Board of Adjustment
Pillsbury Memorial Hall
Meeting Minutes
February 25, 2015

Present: Zoning Board of Adjustment Members: Bill Hallahan, Chair; Dane Headley, Doug Sweet, and Ed Canane, Members (Derek Lick, Member was absent); Sue Reel, Alternate (Carla Krajewski, Alternate, was absent); and Laurie Hayward, Land Use Coordinator.

The meeting was called to order at 7:02 PM, by Bill Hallahan, Chair.

Administrative:

The Chair asked the LUC to take roll call and she did so. Hallahan, Headley, Sweet, Canane, and Reel all indicated that they are present. Hallahan opened the meeting explaining that it is an administrative meeting.

Minutes from the last meeting: The Chair asked that members take up the minutes of the meeting of December 17, 2014. It was moved, seconded and voted unanimously to accept the minutes of December 17, 2014 as written.

Correspondence: The Luc explained that there had been no recent applications or even correspondence about possible applications. She stated that it had been unusually quiet for both the Planning Board and the Zoning Board of Adjustment during January and February. She pointed out that this has provided an opportunity for both Land Use Boards to look at possible revisions to Zoning Ordinances and Subdivision and Site Plan Regulations.

Work Session:

The Chair then took up the subject of possible revisions to the Zoning Ordinance.

Solar: The Chair told members that he had done some work on a possible new article on solar installations. He explained that research that he had done and that his suggestions currently are more about roof mounted installations. As far as ground mounted installations, he had asked the LUC to do some checking with New London to see how they had determined that the ground mounted facility at the "four corners" (the Flying Goose) should be approved and what their ordinance says. The LUC explained that she understands that the New Hampshire Office of Energy and Planning (OEP) plans to publish model language for solar installation ordinances in 2015 and that perhaps New London is waiting for that language before voting an ordinance. The LUC will check.

Hallahan continued the discussion of what a solar ordinance might include. He mentioned requiring state approval. The LUC cautioned that she thinks that there is a relatively new statutory requirement that towns not require state approvals in advance of taking up an application. She added that a board can make obtaining required state approvals a condition of their approval. The Chair stated that he does feel that the town's ordinance should take into consideration state requirements. So, for example if the state requires approval of design or installation by the electrical supplier, then that should also be in the town's ordinance.

The Chair asked if members knew of any solar installations in town. Canane said that he does. There was a discussion about current installations. The Board moved on to the subject of fees for building permits and the LUC told them that Andover has a \$50 fee for any type of solar installation. Sweet explained that he feels it is important that there be plans submitted for any solar installation and they should be the same plans that the state will require for their approval. Sweet pointed out that, with ground installations, there is an increase in the impervious surfaces and that especially where there is a body of water this may be an important consideration and should be dealt with in the ordinance. Sweet explained that the state does look at this sort of issue and it really would be helpful if the state

approval was obtained prior to applying to the town. The LUC explained that there have been a number of recent decisions at the federal and the state level that limit some of the things that Land Use Boards can do. She cited recent laws regarding cell towers that preempt local control.

Board members took up the question of whether the town needs a solar zoning ordinance. The Chair stated that he feels that it is needed. He explained that it helps to prevent problems that might arise and takes away questions of subjective handling of requests for building permits. The Chair asked members what they felt about not requiring Zoning Board of Adjustment application for roof-top solar installations that do not make changes to the footprint. Sweet indicated that his concern would be that there might be an issue with solar reflection. Headley indicated that he had never seen any form of solar reflection from any solar installation. There was a discussion about whether solar would even come in for a permit if it was a "permitted use". It was agreed that the change of roofing surface would require that a homeowner come in for a building permit.

There was general agreement that there should be an ordinance and that roof top installations as long as they do not change the footprint of the structure should be permitted and that ground mount installations would need closer review in connection with zoning requirements like setbacks, including wetland requirements. The Chair suggested that perhaps this was not something that they needed to do right away; but they could continue to do some research. Canane stated that he thinks it would be good to decide on language for next year's 2016 town vote.

There was a brief discussion about how the language could be added to the Zoning Ordinance, whether simply to add language to sections on "permitted uses" or to have a separate article on solar. Canane indicated that he believes solar is going to become much more common in the near future. The Chair stated he suspects that is correct and pointed out that Sutton is not in a wind belt. There are some towns that have access to wind generated power. Sutton does not; but property owners here could make use of solar power. There ensued a discussion about the pros and cons of both wind and solar "farms".

One year to complete: The Chair opened a discussion about the statutory change from one year to two years, asking the LUC to explain. The LUC told members that the New Hampshire statutes had been changed. RSA 674:33 provides a 2-year period to exercise a variance or special exception. Anyplace in the Sutton Town Zoning Ordinance that limits the period to one year should be changed to two years in order to be in compliance with the statute. Some recent changes in New Hampshire statutes specifically limit Land Use Boards' ability to require relatively quick action on certain areas of ordinances and regulations. The LUC told members that she suggests that the places in the Ordinance that she has identified be changed from one year to two years. Members asked if they could choose whether to change or not. The LUC said that she does not believe that this is optional. Canane specifically questioned whether the wording about temporary use of a construction trailer had to be changed. The LUC said that she would send members the new RSA wording and check on whether the language Canane was concerned about needed to be changed.

Manufactured Housing definition: The Chair opened a discussion about the definition of "Manufactured Housing". The LUC explained that she has trouble with this one because she feels the current ordinance is inconsistent in the use of the terms "manufactured housing" and "manufactured homes" and does not seem to adequately define one or both terms. So, she asks the Board to look at the uses and determine the exact phrase and the definition of the phrase. Canane asked for the reference. The definition is in Article XIV Definitions, on page 59 of the most recent approved revised Ordinance (2014), which defines "manufactured housing"; but does not define "manufactured home". For the LUC the concern may be picky but it is that she thinks that manufactured housing could be construed to cover more than is intended and "home" and "housing" are not exactly the same for her – so she is looking for consistency and how this meets the state statute requirements. The phrase "manufactured home" is used in Article IV.A.1 which does not allow "manufactured homes" in the Residential District and appears again in Article V.7.

There was a discussion about both the definitions and whether Article V.7 met the statutory requirements as Sutton only has two zones and no zone where "manufactured housing" is specifically permitted on individual lots. Canane pointed out that there are many examples of "manufactured housing" in Sutton now, especially in the Rural-agricultural district. Sweet pointed out that Sutton does allow for manufactured housing that is built on a chassis, in parks in the

Rural-agricultural zone. There was a brief discussion about meanings and that, ignoring ordinance definitions, for the lay person manufactured housing includes pre-built housing like Timberpeg or like Camelot homes that comes in on a trailer and is then put together on a foundation or slab or whatever- so they need to be ultra-clear in wording and definitions the distinction involving chassis.

The LUC explained that currently the individual who calls and asks whether if he purchases a specific lot is it OK to place a trailer upon it, is usually advised that trailers are not permitted on that lot—which is technically true as there are no lots in a zone that allows “manufactured homes”. It seems that the ordinance dictates that there would need to be a “manufactured housing park” in the Rural-agricultural zone and, to her knowledge, there is not. Canane asked if this means that there needs to be a new zone added in which to permit “manufactured housing”. The LUC read a section from state statute that addresses this issue:

“ 674:32.I No special exception or special permit shall be required for manufactured housing located on individual lots or manufactured housing subdivisions unless such special exception or permit is required by the municipality for single family housing located on individual lots or in subdivisions.”

Board members continued to discuss the issue and agreed to work further on this. Sweet said that he thought that there was language in the Ordinance, but he can't find it. The LUC said that they have to figure out a way to meet the requirements and asked if they wanted her to ask town counsel. Sweet said that he would be in favor of that. Canane proposed that they first consider the spirit of the Ordinance and that the town does not want unlimited placement of manufactured housing. Canane questioned how they could even get a vote in favor of a specific zone allowing manufactured housing. The Chair suggested that the LUC do some more research and they will continue to work on this one next meeting.

Other Definitions and language: The Chair opened a discussion about other concerns regarding definitions that the LUC had noted. The LUC explained that the Planning Board was working on an issue with driveways and that it has been recommended that the Zoning Ordinance be revised to include a section on driveways. The Planning Board asked that the LUC ask that Zoning Board of Adjustment to make a recommendation on new language. The LUC was asked what the current Zoning Ordinance language covers. The LUC cited Article III.G. and read:

“III. GENERAL PROVISIONS

The following provisions shall apply to all districts:

.....

G. Construction of new streets, drainage facilities, sidewalks and curbs must be done under the supervision of, or with the approval of, the Road Agent and the Board of Selectmen of the Town of Sutton.”

Members questioned whether the ordinance should go beyond that statement and whether they had authority to consider language that covers anything beyond the junction with the road and the 10-20 feet beyond the road and the property line. Canane asked what the intent of a change is. The LUC explained that this is intended to cover any new driveway in the context of new subdivisions or changes of use and is to provide Zoning Ordinance support for sections of the Subdivision and Site Plan Regulations that pertain to driveways. Canane described a situation he knows of in another town where a builder plans to build a mile long driveway. Canane asked if a similar situation in Sutton would need to go before the Sutton Boards. The LUC stated that would be so because of the length. The LUC explained that the Planning Board has given the Road Agent the authority to act on driveway applications if they meet certain criteria, including length. When all of the criteria are met, then the road Agent simply approves the application.

The LUC further explained that there is heightened sensitivity to the issues, in part, because there have been recent issues with abutters asking the Town to take over their private roads and/or common driveways. Often the private drives that abutters want the town to maintain have not been built to town specifications and to bring them up to those standards can be a very expensive proposition. One way of addressing one type of problem is through the development of language in both the Zoning Ordinance and the Subdivision and Site Plan Regulations addressing driveway design. Canane expressed his concerns regarding private property rights. Hallahan stated that he simply

feels it is more of a Planning Board issue and not for the ZBA to take up. The LUC stated that the Planning Board sees it as more of a health and safety issue. Sweet explained that driveway design requires consideration of whether fire trucks and other emergency vehicles can get from the town road to the location on the property of the emergency. Canane offered that, from his point of view, the property owner has the right to risk that equipment can't get to him if he builds an inadequate driveway. Sweet asked if he also feels the drivers of emergency vehicles who might be endangered should not be protected by the requirement that a less dangerous driveway be installed? Canane suggested that he would prefer to see property owners advised that they will not get emergency response due to their poor driveway than for the town to require that a driveway be built to town specifications.

Sue Reel asked members if there wasn't a recent situation where they asked an applicant to obtain fire department approval of their driveway turn-around design. The Chair confirmed that they had made such a condition on a proposed long driveway. The Chair further stated that he could see how the concern is about whether the town could be sued if it knows that a driveway design poses a hazard. The LUC explained that one of the Planning Board's concerns is that when the driveway is a part of a Subdivision in front of the Planning Board for approval, their approval ends their involvement. How does a future buyer of a lot know that he is buying a property with badly designed or dangerous driveway access? Canane reiterated that he does not feel that any Ordinance should go beyond the connection to the public access road. The Chair suggested having the LUC get together more information on how such an ordinance might read. Canane asked if ZBA members had to take this up if they did not feel it was an area they wanted to be involved with. The LUC said that they could simply tell her that they do not want to take this up and she would explain that to Planning Board members.

Canane asked where the sample language that the LUC provided came from. The LUC explained that it is a combination of sample language and Planning Board member suggested language modified based on her question and answer with town counsel. The LUC explained that the Planning Board is also very concerned that they not overstep in a situation involving personal real property and how to reconcile that with the importance of ensuring the best outcome in terms of the health, safety and welfare of the larger community. Sweet asked if the language under discussion is consistent with the current driveway permit. The LUC explained that the Planning Board will eventually recommend language changes that will be consistent across Ordinances, Regulations, and Driveway Application and Permit.

Other Business: The LUC reminded members that the only version of the Zoning Ordinance that they should be using is the one which states on the front that it was adopted March 2014 and has pink covers and a black binder. The LUC said that she will bring copies of that Ordinance booklet for members to the next meeting and that is the only version of the Ordinance language that is currently in effect.

Canane asked about the current Conditions Report. The LUC explained that she hasn't sent the Code Enforcement Officer out since last fall due to the snow covered conditions. She offered that the list is now quite small. She will bring reports for the next meeting.

Next meeting is to be held Wednesday, April 15, 2014 at 7pm.

There being no further business, the Chair moved and Headley seconded, and it was voted unanimously that the meeting be adjourned at 8:52 PM.

Respectfully submitted,

Laurie Hayward
Land Use Coordinator