

TOWN OF SUTTON
Zoning Board of Adjustment
Pillsbury Memorial Hall
Meeting Minutes
June 17, 2015

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

The meeting was called to order at 7:15 PM, by Derek Lick, Vice Chairman.

Work Session: Revision of Zoning Ordinance

The Chair asked if the best way to proceed is just page by page. The LUC suggested that the members make use of the spreadsheet provided. That spreadsheet groups suggested changes by type: Non-substantive, Substantive, New, and Removed or moved. She gave an example of a non-substantive change as the change from “Board of Adjustment” to “Zoning Board of Adjustment” which results in changes on almost every page in the Zoning Ordinance. Other non-substantive changes are for similar changes such as “NH” changed to “New Hampshire” and both “State laws” and “RSA(s)” changed to “New Hampshire Revised Statutes Annotated”. Also listed as non-substantive are changes to correct spelling, punctuation, grammar, and case. One example of a change of case is to change “variance” to “Variance” and “special exception” to “Special Exception” where appropriate. The Chair stated that he would agree with simply accepting the non-substantive changes as fine to include in the draft revision of the Zoning Ordinance and to move on to other suggested language. The Chair indicated that sometimes he is more interested in maintaining consistency in the language than exactly what form, for example NH or New Hampshire, be consistent throughout the Ordinance.

There was further discussion of whether to go page by page or by category. The LUC suggested that a change of language under Article III, General Provisions, on page 3, regarding excavations was just a clarification. The Chair voiced a different concern that the language was in error and needed correction not just clarification. B. Article III.B reads: “Excavation and/or removal of sand, gravel, rock, soil or construction aggregate, either for private use or for sale (“excavation”), is subject to New Hampshire Revised Statutes Annotated and the Town of Sutton Excavation Regulations, with the following exceptions. It should be corrected to read “under the following conditions” the items listed are not exceptions. The LUC asked the Board Members if excavations even should be part of the Zoning Ordinance. In Sutton, excavations are subject to a permitting process, fees, and taxes that are handled by the Town Administrator and the Town Tax Collector rather than either of the Land Use Boards. The Chair asked the LUC to further correct the draft revision to clearly show that permitting and inspection is under the Select Board; not the Zoning Board of Adjustment. The Chair also suggested that section III.B.2 be changed to read “unless and until”.

The LUC moved on to the change which removes III.C and keeps III.E (was III.F) which covers “storage of trash or refuse”. She thought that there was part duplication. The Chair clarified that C covers vehicles and F does not seem to. It was agreed that language specific to the storage of vehicles and machinery should be

added; including reference to the RSA that covers such storage and the language from both could be melded into one. The Chair suggested that they simply add a statement such as “this covers the use of the land for the storage of discarded machinery, vehicles or other scrap material”. The LUC told members that there is some really detailed language in the state statutes regarding storage the storage of discarded machinery, vehicles or other scrap material or trash and junk. [See the New Hampshire Revised Statutes Annotated 239.90-110.]

There was a very brief conversation about changing “building” to “residential dwelling”. In the end, it was agreed that in that; in that case (III.I), “building” should simply be changed to “dwelling”.

The LUC told members that the draft document in their packets includes possible new language that the Planning Board is considering adding which covers driveways and steep slopes. The LUC reminded the members that she had asked if they wanted to draft language for Driveways and they told her that they thought it would be better to have the Planning Board draft that. The LUC further explained that the language that they see in the current draft is just what the Planning Board has developed thus far and is not necessarily in final form. She pointed out that a concern is that they include language that will help the town avoid seeming to approve dangerous driveways in difficult situations where fire trucks or ambulances cannot easily access the site. The LUC also pointed out that the numbers, for example, what grade is too steep: 25%, more are preliminary and still being discussed. The Chair asked why this language isn’t simply part of the Site Plan Review process. The LUC explained that this is being added at the suggestion of town counsel who has indicated that driveway requirements should be consistent across the Town Driveway Regulation, the Zoning Ordinance and the Subdivision and Site Plan Review Regulations. More specifically, town counsel recommended that there be a specific Driveway section or article added to the Zoning Ordinance, providing authority for the regulations.

The LUC said that, based on reviews of how other towns have handled this, an additional article to establish a Steep Slopes Overlay District was drafted to support limits to steepness which is a significant safety issue. Headley and Lick discussed whether just using Site Plan Review makes more sense. The LUC explained that Site Plan Review is the result of a change of use and the Planning Board already can specify driveway design details when there is a change of use. Headley asked about Subdivisions. The LUC explained that in the Subdivision Regulations they do have requirements for driveways and the Planning Board can make decisions about the safety issues in a driveway design. The Chair asked about the change of use that happens when raw land goes to a residence. The LUC explained that is not a change of use. It is always assumed that a conforming lot will have a single residence whether that has been built or not- so, currently, no Site Plan Review required.

The Chair pointed out that there is a section on driveways in the Building Code Ordinance and that it might make sense to add this language to the Building Code Ordinance rather than the Zoning Ordinance. The LUC explained that her impression is that town counsel is strongly recommending that it go into the Zoning Ordinance. The Chair stated that he would very much like the LUC to find out whether placing it in the building code is adequate and if not, why. Headley agreed that he did not understand why this would be in the Zoning Ordinance. The LUC pointed out that this is about Land Use. This is not like a Noise Ordinance or some other use or situation that has nothing to do with the way you can use land. Headley asked if driveways were not just part of the Building Permit process. The LUC said that driveways are not a part of the Building Permit process. Driveways Permits are currently issued by the Highway Department. The Chair reiterated that he wanted town counsel asked why not in the Building Code Ordinance instead of the Zoning Ordinance. The LUC said that she will ask town counsel to address the question.

Sweet asked about driveways being limited so as not to be more than 1,000 feet from a Class V road. The LUC explained that the big concern is about how emergency vehicles access a property. Currently, Sutton does not allow private roads of more than 1,000 feet in length unless the road is designed so that at incremental distances there are lay-bys that are sized to permit the larger new emergency vehicles, including firetrucks, to access the property. The LUC suggested that this is a health and safety issue. There was more discussion about what should be required and why. Members discussed possible suggestions including that III.J.b, which states "If the total length of the driveway exceeds 1,000 feet, the width shall allow emergency vehicles to pass at a minimum of 1,000 foot intervals" may be precluded by III.J.f, which states "Driveways shall not serve structures located more than 1,000' from a Class V or better road that provides access to the lot." The LUC did indicate that she also finds this a bit odd and wonders if there is any thought that you could have both situations if, for example, a road or driveways has serpentine that make it more than 1,000 feet long; but, not more than 1,000 feet from a Class V road. She will ask the Planning Board for their thoughts about dropping section b. The LUC also said that behind the language is the idea that it is telling what is permitted as that becomes what the Road Agent can approve without any additional review and that which is not covered then must be reviewed by one or both land use boards. In the end it was agreed that any further discussion should wait until after town counsel addresses whether the language really needs to be in the Zoning Ordinance.

There was a conversation about what the process would be if the draft language under consideration is in the Zoning Ordinance. It was left that it likely starts with a Driveway Permit request. If the driveway design does not meet the Zoning Ordinance requirements, the Road Agent denies the Driveway Permit. Then, if the applicant wants to appeal the decision, the applicant can apply for a Variance. If the Zoning Board of Adjustment (ZBA) disapproves, then the applicant can redesign the driveway and start over or not build a driveway where he wished. If the ZBA approves and there is no change of use, then the Road Agent can issue the Driveway Permit as long as the design meets all of his requirements. If the ZBA approves and there is also a change of use, the applicant must also complete a Planning Board Site Plan Review. If the Planning Board approves the Site Plan Review, the Road Agent can issue the Driveway Permit as long as the design meets all of his requirements.

The Chair asked why they wouldn't just put into the Ordinance that the Planning Board has the authority to approve any driveway which is in excess of 1,000 feet long and not look at slope. The LUC said that members need to think about the underlying concern. That concern is that on really steep slopes over long distances there can be serious difficulties getting emergency vehicles into the property. There was extended discussion about this. The LUC told members that she has done much research on how other local towns handle this. She sees Driveway language in most Subdivision and Site Plan Regulations, in many Zoning Ordinances, and has not yet seen it in a Building Code Ordinance.

The LUC told members that the Planning Board is also looking at a revision of the definition of "Driveway" to define it as: "An area located on a lot and built for direct access to a structure or off-road parking space. A driveway shall not serve more than two lots. No property may have more than two driveways unless frontage exceeds 500 feet." That means if an applicant seeks to use a single driveway to access three or more lots, the applicant can be told it is a driveway where it accesses one or two lots; but, if it accesses three lots or more it is a road.

Members went on to discuss the idea of a Steep Slope Overlay District. The Chair asked for an explanation of the usefulness of an increase in percentage grade limitation. Sweet explained a bit of the history of this language in other local towns and his involvement in setting language that includes a minimum length in feet as well as an average slope maximum. Sweet went on to explain to members how and why this is a

reasonable way to identify very steep, difficult terrain. There was extensive conversation about what over 20 feet high which represents an elevation change of 20% or more (calculated by rise/run) might be like. The LUC explained that the state already produces some maps and the town has access to Geological Information Systems maps that have these calculations of steep slopes built in and color coded.

Sweet asked the LUC why this language should be added to the Zoning Ordinance. She explained that the idea is that there is a distinction between what is permitted in steep slope areas and what is permitted in areas that do not have steep slopes. The LUC said that beyond the driveway issue, there is the question of density. Steep slopes cannot support the same level of housing density as non-steep slopes can and one area that comes into play in subdivision design and Planning Board approval. The Chair questioned whether the wording used means that one cannot build a driveway if their property falls in the Wetlands Overlay District or in the Steep Slopes District. The LUC stated that is not what is intended. What is intended is that, if a property falls in one or both of these districts; then there are considerations specific to building in this district. The Chair asked why the Planning Board wants this language in the Zoning Ordinance. [The Wetlands District Overlay already exists in the Zoning Ordinance and is not changed in this draft. Only the Steep Slopes Overlay District is new.] The LUC explained that the Planning Board wants to review applications for Driveway Permits before the Road Agent issues them. The LUC pointed out that there are many types of driveways. The Board might, for example, determine that a driveway with switchbacks is safer and less likely to result in damage to abutting properties or the roads. The Chair stated that he does not see anything that clearly says that all driveways go to the Planning Board for review. The LUC stated that is not necessarily the intention. The Chair asked if it might be useful to have the Planning Board Chair, Carrie Thomas, come to a ZBA meeting to explain the intention. The LUC suggested that they invite Roger Wells who proposed the regulation on driveways and is involved in writing the language on this one. The Chair asked the LUC to invite him to the next meeting. Sweet asked about the limitation at 20% grade and explained that he considers 25% to be more the norm for local Ordinances. Sweet indicated that he did not like the idea of restricting building based on slope grade as there are many improvements in methods of dealing with building on steep slopes, including better engineering designs and construction practices than was once the case. The LUC explained that the Planning Board has not yet agreed to specific numbers and has asked her to develop a matrix using numbers from several different local towns' Ordinances. This is draft language still being developed. Therefore, specific numbers are simply for the sake of having an example at this point. Once Planning Board Members have been able to review that data, they will make a determination of what makes sense for Sutton's Ordinances and Regulations. The LUC told members that a discussion of the language being worked on by the Planning Board was not what she was expecting. She was hoping that language that the ZBA had indicated an interest in revising would be addressed at this meeting and anything that members could agree on would be identified.

The Chair suggested to members that there are many changes that are proposed to correct small things, grammar, formats, and corrections and there are some that create better consistency within the document and including to state statute. The Chair indicated that ZBA Members could likely review and accept those changes at this meeting. The Chair said that he still feels that adding the driveway language to the Zoning Ordinance could be a big issue. Therefore, he really wants to know if town counsel feels it has to be added and if so, why. The LUC stated she will definitely ask the question, including why not in the Building Code. The Chair added that he questions how this would work. For example, would the ZBA apply some sort of calculations when reviewing a variance request in connection to this Zoning Ordinance? Additionally, the Chair stated that he does not at this point understand what the intent is for driveways in the Steep Overlay District. Can they be built; and, under what circumstances?

The Chair then took up draft language that changes the length of time to act upon an approved Variance or Special Exception from one year to two years. The Chair explained that this is a change in the requirement of state statutes and, as such, simply needs to be made. The LUC added that she has a question regarding Travel Trailers that arose when she considered whether the current language in Article III.I and the ways it has been used involves either a Variance or a Special Exception; although it may have been treated like a Variance or a Special Exception in the past. In a small number of situations involving keeping a house being replaced in tact until after construction of a new dwelling, a Variance was given to allow one-year for there to be both the original dwelling and a new dwelling under construction on a single lot. The Chair stated that he doesn't think this involves a variance. Members discussed whether this wasn't more appropriately a variance to the requirement that there only be one dwelling per lot. The Chair asked the LUC for the new state language. The LUC read RSA 674:33. I-a "Variances authorized under paragraph I shall be valid if exercised within 2 years from the date of final approval, or as further extended by local ordinance or by the zoning board of adjustment for good cause, provided that no such variance shall expire within 6 months after the resolution of a planning application filed in reliance upon the variance. " RSA 674:33. IV says the same only in reference to special exceptions. The Chair explained that the issue is then to determine if the Travel Trailer Ordinance requires a Variance or Special Exception to allow a dwelling to be used as a temporary construction trailer. The LUC explained that she questions whether it is either. The Chair indicated that his "gut sense" is that it is neither one. The Chair added that the whole purpose of that is to allow a property owner more time to get things together so that he can replace a dwelling with a newly constructed dwelling on the same lot. The LUC explained that she has discussed this before with town counsel and is bothered by the entire section. Her concern revolves around the question of what are they approving and whether it isn't a "temporary something" that perhaps doesn't belong in the Ordinance as variances are supposed to travel with the property and this is just a temporary convenience that maybe is better handled with a permit, maybe to be approved by the Select Board. The LUC asked whether to take this to town counsel. The Chair said he agreed that it has nothing to do with the land and does relate to the Building Permit and process more closely. The Chair indicated that this too should be reviewed with town counsel.

The LUC asked the Chair for the proper convention for using numbers or fully written number ["1" or "one"]. The Chair said that the convention is anything greater than "ten" is the number only unless it begins the sentence in which case it is written out.

The Chair moved the discussion on to the many changes included in the draft that he does not believe are controversial. The Chair suggested that the Board might want to take these up these suggested changes and make a determination at this meeting. The Chair gave examples including the changes to the Article on Personal Wireless Service Facilities (PWSFs). The LUC explained that the cell tower draft revision language was, for the most part, lifted right out of the state statute, RSA 12-k. The Chair asked the LUC about the new definition of "Cabins". The LUC explained that the term is used in Article IV.A.1 as a use not permitted and that the definition is the same as that used in Building Permits which defines a cabin as a residence that has less than 500 square feet. There was a discussion about cabins, cottages, manufactured homes. It was noted that the state required definition of a manufactured house includes that it is 320 square feet or more which means that you can have manufactured houses that are smaller than "stick built" houses and that seems odd or inconsistent. The Chair indicated that he likes the definition and the changes to the manufactured housing related section and the definition of a "Manufactured home subdivision".

The Chair asked about the draft language for Solar. The LUC explained that she simply took Bill Hallahan's draft language and added to it based on her understanding of things the ZBA Members discussed at the last

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meeting. The Chair said that discussion on the draft solar language should be held until the next meeting at which time Bill Hallahan, Chairman of the ZBA, might be present.

The Chair asked the LUC when the next meeting is scheduled. The LUC told members that the deadline for new applications expired on Monday with no applications received; therefore, there are no cases before the Board at this time and a July meeting is optional. It was decided that there would be no July meeting. **The next meeting is to be held Wednesday, August 19, 2015 at 7pm.**

There being no further business, it was voted unanimously that the meeting be adjourned at 8:55 PM.

Respectfully submitted,

Laurie Hayward
Land Use Coordinator