

TOWN OF SUTTON
Zoning Board of Adjustment
Pillsbury Memorial Hall
Meeting Minutes
November 18, 2015

Present: Zoning Board of Adjustment Members: Derek Lick, Vice Chair; Doug Sweet, Dane Headley, and Sue Reel, Members (Ed Canane, Member, was absent); William Hallahan, Alternate, arrived after the start of the meeting; and Laurie Hayward, Land Use Coordinator.

The meeting was called to order at 7:09 PM, by Derek Lick, Vice Chair.

The Vice Chair opened the meeting and asked that the LUC note in the record the members currently present. Members present at that time were Lick, Sweet, Headley, and Reel. Lick referred to the Agenda and asked the LUC what is the current status of membership. The LUC replied that the Select Board had accepted Bill Hallahan's resignation as Chairman and as Member of the Zoning Board of Adjustment. The Select Board then, as requested, appointed Hallahan as an Alternate Member. At the same time, they approved the ZBA request that Sue Reel be moved from Alternate to Member. The LUC noted that both Reel and Hallahan have been duly sworn in by Town Clerk in their new duties. The LUC stated that there is a full Zoning Board of Adjustment membership with one Alternate position open.

The Vice Chair asked for a motion for election of Chairman of the Board. **Sweet moved that Derek Lick be made Chairman; Headley seconded the motion. The LUC told members that, although Canane could not be at the meeting, he had emailed her stating that he wished his vote noted as being in favor of electing Derek Lick, currently Vice Chairman, to be the new Chairman of the Zoning Board of Adjustment. The vote was taken with Lick abstaining and the remaining members present as well as Canane, via email, voting unanimously in favor of electing Derek Lick Chairman of the Zoning Board of Adjustment.**

Administrative:

Minutes from the last meeting: The Chair asked for a motion to accept the minutes of the meeting of October 21, 2015. **Dane Headley moved to accept the minutes; Doug Sweet seconded the motion and it was voted unanimously.**

The Chair asked if there was additional business to come before the Board and the LUC replied that there was none. The Chair then opened the work session.

Work Session: Revision of Zoning Ordinance

The Chair asked the LUC where she would like to start the discussion. The LUC told members that she had included a document in their packets that is part of the preparation for creating the ballot article for town vote. The document currently shows six amendments and a possible seventh and it might be good to go through those amendments looking for questions, concerns, and whether the Board is currently satisfied with the language under consideration.

The Board took up Amendment 1 which would amend the Zoning Ordinance and Building Code throughout by making various changes, including replacing acronyms with full names; improving consistency of usage and/or clarity: correcting grammar, spelling, and punctuation. The LUC noted that this type of minor change exists on almost every page of the Ordinance. It was agreed that these are non-substantive and the changes had already been discussed and previously voted in favor of the proposed changes by Board Members.

Amendment 2 revises the Zoning Ordinance so that it complies with state and/or federal statutes. Significant changes are made to the Article on Personal Wireless Service Facilities; the language on Manufactured Housing; and the language regarding the length of time for the exercise of a Variance or Special Exception. There was a brief discussion about changes in federal and state statute that necessitated extensive changes to the Personal Wireless Service Facilities and the state statute change that required a simple change from “one year” to “two years” for Variances and Special Exceptions to be exercised.

Amend to comply with RSA 12-K: Dane Headley moved that recommended changes to the Article on Personal Wireless Service Facilities be accepted; the Chair seconded the motion and it was voted unanimously.

There was further discussion about the language in VI.A.5 and the change from one year to two years to “exercise” a Variance or Exception. Sweet noted that the change shown does not read correctly and the word “after” in Section VI.A.5 should be removed. The LUC agreed and said that she would make that correction.

Amend to comply with RSA 674:33: The Chair moved that proposed changes to the Article on Variances and Special Exceptions to increase the length of time to exercise from one year to two years be accepted; Sweet seconded the motion and it was voted unanimously.

[See further down in the minutes for discussions about the use of and the definition of the word “cabin” and implications for “Manufactured homes”.]

Amendment 3 Adds a new Article to the Zoning Ordinance that provides for a Steep Slope Overlay District. Board Members discussed the Planning Board recommended addition of a Steep Slope Overlay District. There was general agreement that the approval of development activities undertaken in the proposed Steep Slope Overlay District would be handled by the Planning Board review and approval of a Special Use Permit as covered in state statutes related to Innovative Land Control laws [RSA 674:16 and 674:21]. The Chair asked the LUC whether language that provides for this is contemplated for this article. The LUC explained that it has not been added at this point; but, in her opinion should be and likely will. **The Chair offered a motion to add a Section C which notes that, for properties located in the Steep Slope Overlay District, for a driveway to be placed on a lot in this district, the owner must obtain a Special Use Permit from the Planning Board.**

Members discussed Section B.2 which states that “If part of a lot lies within the Steep Slopes Overlay District, 80% of such part shall be excluded in the calculation of lot size.” Sweet expressed concern about the language proposed and that it is unclear how this would apply and whether it would significantly change the buildability of current lots of record. Members asked the LUC to question the Planning Board whether the language can be stated to include that this is in the Subdivision and Site Plan process and/or that existing lots of record are exempt and whether that should be added to the beginning of section B.2 and start with the words “For purposes of Subdivision,”. The LUC agreed to ask that question of the Planning Board Members.

Amendment 3 to add a Steep Slope Overlay District: The Chair offered a new motion that the wording in B.2 be revised to “For purposes of Subdivision, if part of a lot lies within the Steep Slopes Overlay District, 80% of such part shall be excluded in the calculation of lot size.” Headley seconded the motion and it was voted unanimously.

Amendment 4 Adds a new Section to Article III, General Provisions, regarding Driveways. The Chair asked the LUC to explain the Planning Board reasons for incorporating this in the Zoning Ordinance. The LUC explained that the Board is concerned with safety issues and what they are looking for is the ability to review what is done on steep slopes, not to prevent any building, but more to make sure that the plans and designs take into account the steepness and are the least likely to cause problems. Headley expressed some concern regarding how it is to be determined that a particular property be considered to have an excessively steep slope. The LUC explained that just because a lot has an area that is steep on it does not mean that it would fall under this provision as long as there were areas on the lot that were relatively level so that a driveway could be built on a run that included some of those relatively level areas and was, therefore not continuously steep. Headley asked who makes that determination. The LUC explained that the idea is to have the Planning Board review driveways that are on questionably steep slopes and determine in the process whether there is an area that will support a driveway and not have a continuously steep slope or if a special design could be developed that would mitigate steep slope problems.

Headley clarified that his question was specifically about the language which does not seem to say what the LUC is saying. Specifically, the draft reads: “PB: **L. Driveways.**

1. Permitted Design. Driveways which do not cross the Wetlands Overlay and/or the Steep Slope Overlay Districts are allowed if they meet the following standards:

a. The grade does not exceed 20% for any 100-foot segment;

b. If the total length of the driveway exceeds 1,000 feet, the width shall allow emergency vehicles to pass at a minimum of 800- foot intervals.

2. Design and Construction. Design and Construction should be done using the methods and practices approved by the U.S. Environmental Protection Agency as set forth in its publications and websites. (See for example www.epa.gov.) In addition, Low-Impact Development (LID) design shall be encouraged for any project to mimic the natural landscape with small and distributed infiltration, storage, and retention and detention measures:

a. Where a reasonable alternative exists, driveways shall not be constructed in the side or rear setbacks; when a driveway must be built within the setbacks, there shall be suitable area for snow storage; “

The language does not even seem to address what to do when property crosses wetlands and/or steep slopes. It does seem to require that all properties must be reviewed for wetlands and steep slopes before a driveway permit can be issued. Members agreed that they did not think the language was well written or clear. The Chair suggested that they need language regarding the Special Use Permit. The Chair moved that the Section should start with “**Such a Special Use Permit shall be granted if the driveway meets the following standards and list those standards. Then, go on to B. and state “for purposes of subdivision and site plan review”.** Headley seconded the motion and it was voted unanimously.

Members discussed the lack of clarity and agreed that they are uncertain whether such requirements should also be required generally across the rest of the town. The decision on that determines how to write Article III. Section L. Members agreed that Section is currently not well worded no matter how you look at it. There was a suggestion that Change B.2 and B.3 and flip them (change the order.)

Amendment 5 Changes the Board or entity responsible for the application/permit process for: [Excavations from Zoning Board of Adjustment to Select Board.] Also, changes the Board or entity responsible for inspecting Excavations to be the Code Enforcement Officer. Changes the Board or entity responsible for the approval of Temporary use of Travel or Construction Trailers: from Zoning Board of Adjustment to Select Board.

Amendment 6 Makes changes to the Article: Definitions. The LUC explained that she has suggested additions to the definitions of certain words used within the Ordinance, including “Cabin”, “Planning Board”, “Select Board”, and “Zoning Board of Adjustment”. The Chair asked the LUC why a definition of “cabin” was added to the proposed language. The LUC explained that there is a prohibition of cabins; therefore, the word “cabins” should be defined. Also, there may be implications for the “manufactured housing” language in connection to the size limitation.

Article IV.A.1 reads “The following uses shall be deemed Residential uses and shall be permitted in the Residential District: 1. Single-family dwellings and buildings accessory thereto, but excluding tents, cabins, and manufactured homes.” The LUC added that she is not sure; but, her sense is that the way this is understood historically could be a problem under state statute. The proposed definition for cabin is: “A dwelling or residence that has less than 500 square feet per family unit exclusive of basements, utility room, porches, garage, breezeways, terraces, attics, or partial stories.” The Chair asked where the LUC got the definition. The LUC stated that the source can be found in the Building Code, Article II.C.7, which states “Every dwelling or residence shall have a first-floor space designed and used for living quarters of not less than five hundred (500) square feet per family unit exclusive of basements, utility room, porches, garage, breezeways, terraces, attics, or partial stories.”

The Chair asked if it did not make sense to simply leave the word “cabin” out of IV.A.1 as it, in essence, is already banned in the Building Code? The Chair next posed the question: assuming that manufactured homes are allowed, could someone apply for a permit and get one for a home 320 square feet in size and the LUC replied that she did not think so as the size would not meet the Building Code size limitation. The Chair then posed another question: will the Building Code be changed to add wording such as “not less than 500 square feet, except for manufactured homes which are not less than 320 square feet”? The LUC stated that she does not believe that either the Planning or the Zoning Board has discussed such a change. The Chair outlined the options on the subject of size and the question of excluding and defining “cabins” as follows: 1. Remove the prohibition and the suggested definition of “cabin”; 2. Remove the prohibition and definition of “cabin” and change the Building Code to require 320 square feet minimum as opposed to the current 500 square feet; and 3. keep the prohibition and definition of “cabin”, the Building Code requirement of 500 square feet and make an exception for manufactured housing.

The Chair moved that language be amended to 1. Delete the proposed “cabin” definition from the Ordinance; 2. Delete the reference to “cabin” in Article IV.A.1; and 3. Make the recommendation that, in the Building Code, Article II. Section C.7 be deleted; thereby removing the requirement for a particular square footage in order to be permitted to build a dwelling. The Chair asked for discussion about that motion.

Members discussed a variety of ways to look at this language question, including whether they could not leave the Building Code language alone and/or could simply require 500 square feet for a manufactured home. Headley suggested that if they want to keep the 500 square foot minimum they could say “except for manufactured housing”. Sweet suggested simply using a 320 square foot minimum, which is the square

footage used in the state definition, as the minimum for any building thereby allowing smaller houses. This would remove the seeming conflict with the state definition of the manufactured house and would neither require nor allow anything different for manufactured housing than “stick-built” housing. Sweet reminded members that the wording in the Ordinance as currently written is not very forward thinking as the current trend is towards much smaller housing units. Headley expressed his concern that someone might build a “dwelling” that is 10’ by 10’. The Chair asked the LUC what constitutes a “dwelling”. The LUC stated that there had to be a kitchen and bathroom facilities [by definition from the Ordinance a dwelling has “cooking, living, sanitary and sleeping facilities”]. There was a very brief discussion about whether by keeping the 500 square foot limitation by exempting manufactured houses, one wasn’t, oddly, making a preference for small houses that are manufactured houses over “stick-built”.

The Chair restated the motion using Sweet’s suggested change. The new motion is that 1. In the Article on Definitions, the proposed “cabin” definition is removed or not added; 2. the word “cabin” removed as a restricted use from Article IV.A.1 in the Ordinance; and 3. the recommendation is made that, in the Building Code, Article II.C.7, the limitation to square footage be changed from 500 to 320 square feet. It was voted and the motion was approved unanimously.

There was a brief discussion about removing definitions of certain words that are no longer used within the Ordinance, including “Loading Space” and “lodging unit” which is defined but not used. The LUC explained that “lodging house” is used and is not defined the Chair suggested that the LUC pick either word and use it and define it. The LUC explained that the definitions of “Manufactured Housing Parks”; “Manufactured Housing Subdivisions” would not be needed in the Ordinance if the Planning Board preferred language for the Manufactured house Section is used. The Planning Board prefers to allow a manufactured house on a conforming lot as a permitted use in the Rural-agricultural District and no specific provision for “Manufactured Housing Parks “and/or “Manufactured Housing Subdivisions”. Also, there are some changes to definitions in order to conform to usage within the Ordinance, including to “Driveway”.

The LUC told members that the Article on Solar that Hallahan was working on is not yet complete and she suspects that there may not be enough time to complete it. The Chair asked the LUC to forward the language that Hallahan did develop and examples of other Solar Ordinance language to him and he would see if an Ordinance could be proposed.

There was a discussion about the need for another meeting or whether they could simply plan on attending the Public Hearing in early January. It was agreed that the Chair would make that determination after the next Planning Board meeting which he would attend if his schedule permitted.

Next regular meeting will be held Wednesday, December 16, 2015 at 7:00 PM if needed. The deadline for new applications expired on Monday with no applications received; therefore, there are no cases before the Board at this time.

There being no further business, the Chair moved and Healey seconded, and it was voted unanimously that the meeting be adjourned at 9:32 PM.

Respectfully submitted,

Approved 12/16/2015

Laurie Hayward
Land Use Coordinator