

TOWN OF SUTTON
Zoning Board of Adjustment
Pillsbury Memorial Hall
Meeting Minutes
December 16, 2015

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

The meeting was called to order at 7:08 PM, by Derek Lick, Vice Chair.

Administrative:

Minutes from the last meeting: The Chair asked for a motion to the minutes of the meetings of November 18, 2015. Headley moved to approve the minutes; Reel seconded and it was voted unanimously to approve.

Work Session: Revision of Zoning Ordinance. The Chair opened a discussion regarding the proposed Zoning Ordinance, asking the LUC for an update. The LUC told the Chair that the Planning Board is hoping to hold a Joint Public Hearing with the Zoning Board of Adjustment (ZBA) Members. The Planning Board Members have suggested that the ZBA Chair might like to present on those proposed revisions that were the work more of the Zoning Board and the Planning Board would take up those that they developed. The Chair questioned how much the ZBA was involved in the items that are to bring Sutton language into compliance with state and/or federal. The LUC explained that she had prepared the language and had town counsel review it. The Chair said that he will review the language and be able to speak on it for the public hearing.

There were extensive discussions about several concerns:

- **Manufactured Homes,** Manufactured homes parks and Manufactured homes subdivisions. Board members continue to prefer that the Ordinance allow Manufactured housing parks and subdivisions; but, not allow a single manufactured house on a single lot. Headley suggested that they should make clear that Manufactured housing means “trailers” or “mobile homes”. The LUC stated that she thought that might be a problem as the state statute is quite clear about the definition of Manufactured homes and referring to “trailer” in the language seems to defeat what the state statute does. The Chair asked the LUC to check with Town Counsel on that point. Canane questioned the use of town counsel rather than relying on the Chair, who is an attorney. The Chair replied that he does like having town counsel look at language. Canane explained that he isn’t saying the LUC shouldn’t go to town counsel; rather he questions whether town counsel is questioned more than is necessary and suggests that the Board does not need to necessarily follow town counsel’s suggestions. Canane gave a good example of draft Ballot wording that town counsel recommended that does not apply fully or meaningfully to Sutton.
- **Two-years for exercise of a Variance or Special Exception.** Canane questioned what “exercise” means. The LUC explained that state statute does not define the word “exercise”. The Chair

stated that his sense is that this is not “substantial completion”; but, it is something like “substantial progress” or some clear action or cost that shows the party is genuinely and actively pursuing the purpose of the Variance or Special Exception.

- The LUC took up **The Steep Slope Ordinance**, explaining that the wording has been changed. The Chair asked if the LUC had the map referenced in the draft language. The LUC told the Board that she did not bring the map; however, there is a map that shows where in Sutton there are significant Steep Slopes. She told members that the new draft does include a section “C” which explains the Conditional Use Permit and is language that ZBA Members had requested in their last meeting. Canane indicated that it is not clear whether a map defines the Steep Slope Overlay District or whether the definition which comes from Section B defines what area is in the Steep Slope Overlay.

Canane asked if someone could have a property affected by the Ordinance that is not on the map. The LUC said, yes; if, a property had an area that met the conditions in Section B, then that property has Steep Slopes. The LUC explained that this works in a way similar to the already existing Wetlands Overlay District Article, in that, there could be a lot anywhere in Sutton that has wetlands and the use of the lot is affected by that Ordinance. The Chair explained that he had thought the map was to define what properties fall under this Overlay District. The LUC explained that she also thought that was the case; but, at the Planning Board meeting of December 8, the Planning Board agreed that they wanted this to apply to any lot that met the definition and they clarified that the map was only a guide to areas that might contain Steep Slopes; but, it is the standards in Section B that are to apply to all Sutton lots. The LUC explained that there is language that states that an applicant who wishes can use the services of a “certified planner” to dispute whether his property is rightfully considered to include steep slopes, in much the same way that, currently, an applicant can hire a wetlands scientist to certify they do not have wetlands. Canane stated that there is a difference as wetlands are a “state issue”.

The LUC explained that, at the last meeting, the ZBA members felt the Article as then drafted was poorly written and did not explain the process for obtaining approvals when Steep Slopes are involved. She told members that she took that to the Planning Board and, in response to that request, Section “C” was added and it explains the Conditional Use Permit and that it is obtained from the Planning Board. The LUC also explained that the calculation of minimum lot area that did exist in prior drafts has been moved from the Steep Slopes Article to Sections in both Article IV Residential and Article V Rural-agricultural.

- **Minimum Lot Area.** The LUC also told members that the language currently used in Articles IV and V states “minimum lot area per family”, language that she finds odd. The proposed revision uses “minimum lot area for subdivision”. This suggestion for clarifying that minimum lot area only exists in context of subdivision actually also came up at the prior ZBA meeting.
- **Conditional Use Permit.** The Chair questioned the use of the word “may” in connection to approval of a Conditional Use Permit and asked the LUC if the intention is that the Planning Board can still say “no” even if the standards listed in that Section are met. The LUC stated that she believes that “may” is intentional and appropriate in context of subdivision. That is that a Conditional Use Permit might be declined as part of a larger issue regarding the subdivision as proposed.

Reel indicated that she felt the Article on Steep Slopes was just pulled out of other towns' ordinances and placed in Sutton's.

The LUC explained that Steep Slopes and Wetlands Ordinances are common in other towns in New Hampshire. Such articles exist where it is recognized that there is a real need to limit density in areas with poor soils and steep slopes. The land simply cannot support private wells and septic system as well where slopes and wetlands are involved. She further explained that in Sutton we do not have town water or town septic. In towns without town water and/or town septic the issues of building density becomes very important. Reel questioned whether using the term "overlay District" wasn't confusing. The LUC cautioned against thinking of a Overlay District as similar to say, the use of the term "Residential District". The LUC explained that a "zoning district" has hard and fast lines and covers a clearly defined area, separate from areas covered by any other district- in Sutton there are two. Overlay districts cover all areas of the town where a specific condition exists, regardless of what Zone a property is in.

The Chair indicated that he still considers that the Article is not well written. The LUC told members that she has questions about this Article as well as they do and she has voiced some of those questions to the Planning Board. However, this is the current language that the Planning Board has approved. The Chair asked the LUC if the Planning Board could point to three cases in the town of Sutton that have this issue. [Not detailed at the meeting, and just a few cases of many- The King Ridge/Northland subdivision in 1995; Angel Hawk in 2005; Harborview in 2007; The Meadowview/KPRC subdivision and re-subdivision in 2007; Matthew Falvey subdivision in 2011 which was rescinded at owner's request in 2014.] The LUC stated that it is her understanding that the Board has been working on getting this sort of language in their regulations for years because of multiple situations involving difficult lots with poor soils on steep slopes. It was at town counsel's suggestion that this sort of language be placed in the Zoning Ordinance to give the Subdivision & Site Plan Regulations and use of the Conditional Use Permit authority from the Sutton Zoning Ordinance. The LUC pointed out that there have been situations where the Highway Department and the Fire Department have told Planning Board members that a plan for subdivision does not properly account for emergency vehicle access and will be a danger to property owners and emergency personnel or that a certain property or driveway might, if developed in a certain way create issues with storm damage and water runoff that might damage a town road. The LUC also pointed out that the language proposed has been revised and revised repeatedly over the past few months and may be revised again. These subdivisions on steep slopes are issues the Planning Board routinely seeks to address and mitigate as part of the Subdivision or Site Plan Review process. The LUC stated that the Planning Board has a statutory requirement to consider things like health, safety, welfare when considering subdivisions and Sutton's Planning Board takes that seriously. The Chair stated that it is his opinion that the Ordinance should be based on a map and it should be that simple. If it is on the map, a property is subject to the Steep Slope Overlay District; if not, it is not. The consensus was that the ZBA Members did not like the language. The LUC asked if one of the ZBA Members wanted to write something regarding their position. The Chair said that he could easily and would send it to her.

- **Driveways.** The Chair added a suggestion for improving the language on Driveways, stating that

the fix is simple to just state that Steep Slope standards come into play in the context of subdivisions. There was a discussion about Driveways in the Zoning Ordinance; in the Town Driveway Ordinance; and in the Planning Board's Subdivision and Site Plan Regulations. The LUC also explained the difference between "curb cut access" and a "Driveway Permit" and a "Conditional Use Permit".

- **Signs.** Canane asked what the proposed change in maximum illumination wattage is. The LUC explained that the wattage is reduced to 40 watts maximum. Canane indicated that he thinks that is too low. Canane also asked the LUC if she could change the ballot language to clearly state the wattage.

The Chair told members that he does appreciate the time and the effort that the Planning Board has put into the changes they have proposed. He disagrees with some of the language; but still recognizes the effort to provide what they feel is needed to improve the Zoning Ordinance.

The Public Hearing on the Zoning Ordinance is scheduled for January 5, 2016

The next ZBA meeting is to be held Wednesday, February 17, 2016 at 7pm.

There being no further business, the meeting was adjourned at 9:19 PM.

Respectfully submitted,

Laurie Hayward
Land Use Coordinator