

MINUTES OF THE MEETING
OF THE
CANTERBURY PLANNING BOARD

January 21, 2014

The Chair called the meeting to order at 7:00 p.m. It was determined that a quorum was present.

BOARD MEMBERS PRESENT: Art Rose, Chair, Jim Snyder, Vice-Chair, Doug McCallum, Joshua Gordon, Chris Blair, Alice Veenstra, and Tyson Miller, BOS Representative.

BOARD MEMBERS ABSENT: Seth Cohn

OTHER PARTIES PRESENT: Hillary Nelson, Jim McCollough, Sue Snyder, John Leggett, Ruth Mann, Wayne Mann, John Carr, Harry Weiser, Craig Pullen, Corinne Pullen, Al Edelstein, Chuck Sanborn, Mark Stevens, Donna Miller

Draft Minutes of January 7, 2014: Jim made a motion to accept and approve the minutes of January 7, 2014, seconded by Alice.

Discussion of minutes: None.

Vote: Unanimous. Minutes were approved.

Pre-Application Conceptual Consultation on Map 101 /49 by Michael Pelky, for a four lot subdivision (18 acres): Art went over parameters of pre-application conceptual consultation. This is an old subdivision. The roads were in for that piece of property, but to put a house on each one of those entrances, I don't have the 300 feet. So instead of putting four different roads into the property he would like to use that for the beginning of the entrance of the driveways. One off Old Gilmanton, two of Blue Boar Lane (off Shaker Road), and another off Canterbury Shore. He would like to subdivide the property into four different lots, three plus acres per lot. Tyson was looking for the frontage on the maps, Jim said the only frontage is the entry ways. Mr. Pelky was trying to determine how to access the lots. Does he go in 150 feet straight through the lots and call it frontage on each side of the road? Jim stated this is four lots which makes it a major subdivision and the Board would have to look at regulations for that. Jim was not sure how he would have to approach the frontage. A road would have to be accepted as a road by the Town. He doesn't think that can be done when

41 the only access is off a private road. Old Gilmanton is a Class VI road where he is
42 looking at and becomes private at Nottingham and Old Gilmanton. Jim said to develop
43 any lot, he thinks he may have to get shoreline protection permits since he is within 250
44 feet of water. The Board cannot create any lots that don't have frontage. Jim stated at
45 a minimum they would have to meet town classified road standards. Mr. Pelky pointed
46 out they are private roads in an association property. Art discussed that a road would
47 have to be built connecting his frontage onto Old Gilmanton accepted at town road
48 standards and deeded over to the Town. Jim was unsure if a road had to be accepted
49 as a town road in order to be considered frontage. Tyson thought it had to be built
50 within town road standards. Mr. Pelky asked if he went off Old Gilmanton, he would
51 have to put a road better than a Class VI. Art confirmed. Jim said in order to subdivide.
52 In the absence of a variance from ZBA saying he can be relieved of the frontage
53 requirement, the Board does not have authority to create lots without frontage and
54 acreage standard. The acreage here is not a problem. Alice asked if he could get a
55 variance. Jim said a variance trumps the Zoning Ordinance. Jim said building one
56 house would not be a problem, but building a subdivision you would need real frontage
57 and that is 300 feet. Mr. Pelky said he would have to put a town road in, Art confirmed
58 but was not sure if the town has to accept it. Jim said you can create a subdivision with
59 a private road, but it needs to meet town standards. Mr. Pelky asked that even though
60 even though Sherwood Forest is private property, he still has to meet the setbacks for
61 the Town on the roads. Jim said yes, in order to subdivide it. Jim suggested looking at
62 the ordinance for multifamily and see how to possibly get more residences out of one
63 driveway. Joshua asked how far it is from the pond. Mr. Pelky said the farthest it varies
64 from 75 feet to 360 feet. Jim asked if other properties have deeded right of ways to the
65 pond, Mr. Pelky said no. Mr. Pelky said the wetlands are on the right side of Old
66 Gilmanton. He asked what was the next step. Art described how he would put a road
67 in that would give each lot 300 feet of frontage. Art stated he would want to go out to
68 hire an engineer. Jim explained that what is appears Mr. Pelky wants to do. He would
69 like to use each existing opening that already have some frontage, as a way to get into
70 the property, cut it open to four pieces, each piece would have a 150' roadway coming
71 into it in his view and he would claim frontage on both sides of that road to get to 300'.
72 The Board discussed that approach and was unsure about it. Jim said his opinion is
73 that he should look at regulations for multifamily to see if he can get what he wants.
74 The parcel is zoned as rural. Art asked what Mr. Pelky is wanting put put up on the lots.
75 Mr. Pelky said he wants to put in 4 new waterfront homes, which are more taxes coming
76 in. Jim said on the face it looks like it is a reasonable use, but the ponds are already so
77 burdened with development. If the Planning Board can't do it in a logical way, he may
78 want to talk to Zoning. Mr. Pelky wants to know where to go from here. Jim said he
79 would decide on roads or find a way around it, which is at the Zoning Board. The Board
80 suggested he hire an attorney with the complexities of this proposed project.

Public Hearing on Proposal to Amend Zoning Ordinance RE: Farm Stand Issue:

Tyson reviewed the purpose of the meeting. When an establishment is considered a farm stand, then it has a privilege and that is, it can be considered agricultural and not commercial retail. That allows it to be placed in almost any zone. There are three sections of this issue. 1) How much of the sales in that stand have to be grown on the farm of the owner of the stand, or farms of the owner of the stand, what percentage; 2) What about the rest of the stuff, what does that have to consist of; and 3) Proving that percentage through sales volume.

The first part is the easy part. Right now our zoning says “the majority has to be grown on the owners farm” and the State RSA says 35%. The Selectmen would only enforce 35%. It would be better for Zoning guidance to have it consistent with the State RSA of 35%. The State RSAs were written to protect Towns and support agriculture.

The second part is that we require that the rest of it or all of it in that farm stand be locally grown. For example, if you had a corn crop and your corn wasn’t ready to sell, you could bring some in from non-local sources and sell it until your corn was ready. We are proposing changing from “locally grown” to “agriculturally related” which gives you other options in your farm stands like jams and jellies for example.

Last part talks about something that is valid, no matter what. Proof of farm stand sales income may be required only so far as to determine conformity with these provisions. That means that if push came to shove, in a very rare case where you couldn’t tell that 35% was locally grown, the code enforcement officer would ask to see financial papers that showed sales volume. If the stand owner did not want to show that to the Town, that would be fine, the Town would have to get permission through a judge to see the documentation.

Discussion:

First Item: Changing majority rule to “35% of products grown on the property of farm stand owner” to conform with the State RSA. Jim ask if the strike out language on the handout of language under the set back? Tyson said yes. Jim said that is the only place that the Ordinance specifies how much has to be grown. Tyson stated that it somehow ended up in the agriculture retail outlet setback section. The line says “products for sale shall be locally grown and majority shall be grown on the site or grown on other land of the owner of the stand”. We would strike that and replace it with “at least 35% of the product sales and dollar volume is attributable to products produced

on the farm or farms of the farm stand owner or farm stand operator. So Jim said you would need to strike it from item 5 and put the wording in item A. Jim asked to what extent does that language directly relate to the RSA. Tyson said it is directly from RSA 21:34(a). Jim confirmed this was to bring our ordinance of the state. Tyson confirmed.

Tyson asked the audience if anyone wanted to speak in favor. There were none. Anyone to speak against it? There was a question about owned land vs leased land. How would that be handled. Joshua said he doesn't think it makes a difference, its produced on the farm. Jim stated the farm stand owner, but theres nothing that prohibits the farm stand owner from leasing land. He owns the farm stand but may lease his whole farm. Tyson said this is only about farm stands. You can sell retail or corn out of your house. Alice said it says "owner or operator". A member of the audience asked what designates it as a farm stand. Alice said it has to be a permanent shelter. Tyson pointed out the RSA is already written, the Board is just trying to make it easier. There was discussion about the RSA itself.

Mr. Mann read the RSA to everyone. The RSA referred to the owner, not the operator. Tysons language was taken from the NH DES Publication Agricultural Incentive Zoning. There was further discussion about owning land vs leasing. Jim

Second Item: Adding a line that would say "product sales not attributed to farm or farms or farm stand owner or farm stand operated shall be agriculturally related and may include but not necessarily limited to the sale of garden accessories, cheese, home crafts, cut flowers, dried flowers, value added products (jams, jellies) baked goods from a farm stand kitchen". This replaces "everything must be locally grown

Discussion: Joshua asked if he was right that the purpose is to make it so that someone wants to sell things they didn't grow, it makes it easier for them to qualify as a farm stand so they can put it in a non-commercial zone? Tyson said theoretically everything has to be locally grown, but precludes you from bringing corn in from another state even if you wanted to. It makes it pretty clear that you can sell prepared products too. Jim said without the language, you could have Wayne's 50% tomatoes and 50% auto parts store. Tyson said if you don't have nothing in there you end up with 35% being locally grown on your farm and the rest can be, auto parts for example. An audience member stated that it seems the wording "locally grown" is more limiting than the list read. Tyson said the list says may be but not necessarily limited to. The audience member says it seems more inclusive than locally grown. Someone asked what constitutes locally grown. Tyson said some of these things would be in the hands of Selectmen for enforcement. Alice said it is usually within a certain number of miles, like 100 or 150 miles. Tyson said we are changing to agriculturally related, rather than

161 locally grown. We end up at a point where the code enforcement officer, ZBA and a
162 court could eventually say whether it was agriculturally related or not. Selling auto parts
163 in a farm stand obviously is not agriculturally related.

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165 Mr. Mann said the State law is the 35% that he can produce on land he owns or
166 controls. Mr. Mann then gave scenarios of various issues that could come relating to
167 the 35%. There was discussion about locally grown products and agriculturally related
168 items. Tyson asked if the audience thought that agriculturally related is easier than
169 locally grown. The thought was divided. Joshua this is really easier than it is being
170 made out to be. He went on to say that Part A that Tyson got from the RSA and the
171 LGC, is at least 35% of the product sales and dollar volume is attributable to products
172 produces on the farm or locale, and Part B, the part added: product sales not
173 attributable to the farm. So its whatever your selling that isn't attributable to the farm
174 has to be agriculturally related or garden accessories etc. So it's only those thing sthat
175 are not grown, it is how you're going to measure the other 65% of what you are selling,
176 correct? Tyson confirmed. Tyson also stated that he didn't invent these paragraphs, it
177 came from the NH DES publication. There is other information in there that might come
178 up to be addressed next year, for example the issue of bringing in people to pick apples
179 for example, and having housing for them. Right now this Town is very shaky as to
180 whether or not this is allowed. He believes there should be something in the zoning to
181 allow facilities for housing seasonal workers. His point was that the publication is a
182 good one as far as agriculture is concerned. Chris asked Wayne Mann if he is
183 concerned about the "list" and pointed out the list is not restrictive. It eliminates some
184 things from being talked about. Joshua pointed out that it is helpful for the code
185 enforcement officer. Chris added that it eliminates some things from being talked about.
186 Mr. Mann suggested we just go with the State RSA. Mr. Mann if the town really thought
187 he was not meeting the 35% they would end up in court. Chris stated that the argument
188 isn't really about the 35%, it's about the other 65%.

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190 Jim asked if we could get a show of hands to say that everything in a farm stand should
191 be agriculturally related. The majority raised their hands. One audience member said it
192 depends what is being considered agriculturally related. Jim said not to define it, he
193 thought that was the problem. He suggested if it walks like a duck and quacks like a
194 duck... Chris pointed out that the previous ordinance refers to "grown". Chris is
195 concerned that agriculturally related does not refer to animal or vegetable. A tractor is
196 agriculturally related, but you can't have them for sale at a farm stand. Tyson read
197 definition of agriculturally related (RSA 21, 34 A). Agriculture is different from
198 agriculturally related. Doug pointed out that many many products could be considered
199 agriculturally related. Chris is concerned that agriculturally related sounds like a tractor.
200 Jim wanted to take the poll a step further. It seemed like there was general support that

things for sale within the 1,200 square foot farm stand should be agriculturally related. Mr. Mann said a farm stand is allowed in every zone in this town and we shouldn't include the 1,200 square feet. Mr. Mann said a farm stand is allowed in every zone in this town except industrial and residential, you don't need 1,200 square feet. Jim said it's already in the Zoning Ordinance. Mr. Mann stated it's in the setback, not in the definition. Joshua confirmed he was correct about that. Jim said you'd need to take out the 1,200 from the Zoning Ordinance. Jim asked how many people support the list following agriculturally related and want that to be in there? Alice asked what the list was. Jim said "may include but not necessarily limited to....the sale of garden accessories, cheese, home crafts, cut flowers, dried flowers etc." Joshua said you have to have similar things to that list. Jim asked for a show of hands. Not a big response. An audience member asked him to reread the list. Jim read it again. He felt the "accessories" could be fencing, which is trying to be kept out of the farmstand. He pointed out that even in the list, fencing would be allowed. Jim said in another town, a fencing business got so big, it overwhelmed the farm, and really became a retail store. Joshua said here you would get shut down if it wasn't in a commercial district. More examples were given by audience members of various products being sold with a result of being closed down and the risks involved. Tyson pointed out that you have to trust that people on your boards are going to be reasonable.

Chris explained that the first thing that Tyson was trying to go from 50% to 35%, which makes it easier. Tyson said we need to keep it in the spirit of what a farm stand is. It's not a little store, not a retail store. Jim said nothing happens unless a neighbor comes to the Code Enforcement Officer or the Selectmen and complains that someone is not in compliance with the Zoning Ordinance and demands action. Tyson said by the time that came around, the season would be over and we would say "don't do it again next year".

Tyson said the last part is: Proof of farm stand sales income may be required only so far as to determine conformity with these provisions. Said documentation shall be held confidentially by the Code Enforcement Officer, and there are two RSA's that allow us to do that. RSA 91-A:5 IV, covering documents and 91-A:3, II (j) which is public discussion.

Mr. Mann is adamantly opposed to that. In reality when you start looking at his farm stand, you will ask, informally, to see financials. He knows the proposal does not say he "must" provide documents, it says "may". He finds it repugnant that the language would be in there. Mr. Mann would like to strike that sentence. Chris said he read it differently. He thought it limited data they could ask for. Tyson said he didn't like the word "required", maybe it should "requested". Art said The RSA addresses the financial

aspect. If the Code Enforcement officer sees you're not meeting the requirements, the ownness is on the farm stand owner to provide evidence that he is meeting the 35%. Joshua said the ownness is on the Code Enforcement Office to stand there every hour that the farm stand is open and overhear the transactions and total them all up. If you're not going to do it with a documents, that's the only other way to enforce it. Tyson is willing to take the sentence out. The fact that the State says products produced by a farm has to be 35% of product sales and dollar volume, it pretty much says that if push came to shove, one would ask for financial records to prove it is 35%. Tyson also stressed that this would only happen if it came so close, and there was probably nobody with a farm stand in here would be questioned about that. Tyson said the town cannot just close you down if you are violating the zoning. They need to go to a judge to force you to prove it. The Town would have written this differently, but this is what the State does.

Jim made a motion to line out everything from "Proof" through RSA 91-A:3, II j (the end of the paragraph) and then accept the other changes as written and move them forward to a town meeting vote as a Zoning Ordinance change. Chris seconded.

Discussion: Audience member commented that if there is confusion about the interpretation within this group and it goes to town meeting, it will certainly cause confusion there, unless someone can figure out a way to make it a lot clearer. Tyson said that was a good question because it doesn't go to Town Meeting, it goes to the first session, which is a ballot vote, but I think there should be a handout that describes it more clearly.

Art asked if any other input on the modification to ordinance. There was none.

Vote was held on the motion: Unanimous. The language will be moved to town meeting for a vote. Tyson will prepare a handout in plain English.

Other Business: Tyson brought to the Board's attention that there is a proposed modification to the Right to Know law that will make it a lot more stricter than it is. There was slight discussion with no opinions given.

Jim made a motion to adjourn, seconded by Joshua. Motion was voted on and approved.

Meeting adjourned at 8:20 p.m.

Lori Venie, Secretary

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Next meeting: February 11, 2014, 7:00 p.m.