

1
2 MINUTES OF THE MEETING
3 OF THE
4 CANTERBURY PLANNING BOARD
5

6 October 22, 2018
7

8 BOARD MEMBERS PRESENT: Jim Snyder, Chairman, Joshua Gordon, Vice
9 Chairman, Tyson Miller, Kent Ruesswick, Hillary Nelson , Cheryl Gordon
10

11 OTHERS PRESENT: from Zoning Board of Adjustment: Christopher Evans (ZBA
12 alternate), Jim Wieck, Barbie Tilton, Lisa Carlson (ZBA alternate and secretary), Joe
13 Halla (Chair), Web Stout, Gary Spaulding
14

15 ABSENT: Art Rose, Lucy Nichols, Barbie Tilton.
16

17 **Continued discussion of draft language for Conditional Use Permit with Zoning**
18 **Board of Adjustment members:**
19

20 Jim called the meeting to Order
21

22 Jim Snyder first asked if any Zoning Board of Adjustment (ZBA) members had any
23 questions or comments from last meeting. There were none.
24

25 Kent Ruesswick spoke on behalf of the Planning Board subcommittee that has been
26 working on the Table of Use (Table) revisions. He explained that he rejoined the
27 Planning Board 4-5 years ago to help look at the Table and make it friendlier for the
28 Canterbury citizens. A lot of things are not very clearly defined. He felt if we were
29 looking to give applicants more flexibility in Town, we need a method of allowing the
30 Planning Board more options to work within the Table. There are 197 proposed areas
31 for Conditional Use Permits (CU) in the draft revised Table that are being discussed.
32 That is an attempt to address the areas that seem to need work.
33

34 Joe Halla spoke to say the ZBA's feeling is "no" on conditional use permits. Everywhere
35 they see CU in the proposed Table basically used to be a Special Exception (SE). He
36 feels if it's not broke, don't fix it. Hillary Nelson used an example of the old Morning
37 Dove campground project since that was a big project that had a lot of issues. She felt
38 if that project came through the Planning Board for CU, we would have been able to go
39 into the nuances of the project more than the ZBA is able to. Residents were up in arms
40 over that project. The Board members continued discussion about that project in
41 general, including number of sites allowed, wetlands, and DES.
42

43 Jim Snyder said there's a widely held view that if the ZBA approves a use by special
44 exception or variance, it's a done deal and the Planning Board can just work around the

edges during site plan review. Gary Spaulding felt the way the Planning Board is proposing to handle CU looks like spot zoning to him. The Planning Board disagreed.

Tyson Miller spoke to the Belmont Planning Department about their handling of conditional use which they have a little of in their town, as does Concord. They have a very clear set up that spells out what the conditions are in writing. They include conditions precedent, conditions subsequent, and conditions while being built.

Web Stout said he's worked with other town planning boards with CU permits and it's more or less incidental to what's already been approved. Web gave a few examples. He feels it's more in the planning than the use. He also feels conditional use gives a yellow light to a developer thinking they automatically have a good shot.

Hillary asked in general whether all members of the ZBA don't like CU. Gary Spaulding has done planning in other towns for 30 years who have CU and he likes it for those towns, but he doesn't like it in Canterbury.

Jim Snyder wanted to step back and said he disagrees strongly that if this Board were to deny a site plan that its spot zoning. If we deny one for just cause, that's us doing our job. With respect to CU, if we abandon this idea, there's one area we shouldn't, and that's for the applicants who come to us first with a project that seems perfectly suited for the commercial zone for example. We could go to the Table and that use isn't there so they have to go for a variance. The standard for a variance may be stricter than it ought to be for their proposed use. If we added a line that says "other uses similar to those listed here" we, as the Planning Board, could then say it's close enough to what was envisioned and we could allow it. At ZBA, you can only say there's no hardship here and they wouldn't get the variance.

Gary looked at "warehouse" under "L" in the Table, which is commercial. Everything proposed is CU. He asked why we don't just make it permitted. There was discussion about CU and special exception.

Chris Evans strongly feels people should be allowed to do with their property what they wish. He's hearing that the Planning Board feels it should choose what can be done and he'll never agree with that. Hillary disagreed and said the goal is to determine whether a project is an appropriate use in an area, and for the town, and to be sure it meets environmental guidelines, or that it's going to be too noisy. If people are having to go to ZBA for variances time and time again, we need to fix the Table. Everyone in attendance agreed that the Table needs work. Joe said they type of things we're talking about here only applies to maybe 3 applications in the last 10 years where variances were granted: the tent place, the driving school, and the window factory. They seemed reasonable and it wasn't a problem.

Jim asked whether the driving school had to show a hardship to get a variance. Joe said they granted it because they felt it was a use not detrimental to that zone and a use

that was not listed. Jim asked whether the use not being listed was the hardship. Joe said no. Jim would have thought they would have had a harder time getting a variance. Web said there are a lot of uses that should be taken out as a variance and the uses should be defined a bit more.

Hillary asked ZBA members their opinion if we flipped most of these from CU to SE. Web isn't saying get rid of CU wholly, it should be used incidentally. For example, if we had setbacks to wetlands, most other towns allow that as a CU permit rather than SE.

Joshua Gordon asked Web whether he sees SE as a greenlight, CU as yellow and variance as red light. Web agreed to that analogy. Joe said SE is granted to something listed in Zoning Ordinance. If the applicant meets the conditions, they have to grant it. They can't say no, we don't like the idea. He added that years ago there was only a variance, now there is a use variance and an area variance. Use variances are much easier to approve. Jim asked what the threshold is. Joe said it's the decision you make on the evidence in front of you. Jim said basically that's spot zoning. Joe said yes.

Joshua spoke to say SE and CU are planning tools that are granular regulations. You have to put variance and SE/CU in separate categories to protect the constitutional right. CU gives a lot more flexibility to mitigate problems. It would be nice for applicants to go to one place at one time and get one set of conditions so everyone knows what it is. There's a value to having two boards, but it's odd that someone has to do the same thing twice, outside variances. That's the value of CU Permit.

Joe said any of the things in the Zoning Ordinance listed as "not allowed" will never get a variance.

Joshua asked if the ZBA is ok with the new Table, but not the CU. ZBA members felt there should be more uses that are simply permitted.

Hillary asked about the divisions in the Table and the new categories that are included. Joe said they don't really agree to every single one, but that will happen. Everyone isn't going to agree. Hillary let the ZBA know this proposed Table was built on the recommendation of the Central New Hampshire Regional Planning Commission (CNHRPC) and asked whether category wise, it was ok? Generally yes.

Tyson wants to go back to conditions precedent and subsequent. He wants applicants to leave the ZBA hearing understanding what they need to do right away and later. Web said there are very few conditions they place themselves and said the people self-impose the conditions which are written in the Minutes. There was discussion about conditions being included on the plan that gets recorded. Web said it's tough to get all of that on a plan. Joe said from the Court's standpoint, what the applicant says they're going to do are the conditions.

Web felt the Planning Board should ask applicants from the outset whether they received a special exception from the ZBA. The Board agreed that we should add that

question to the application and also require them to provide a copy of the minutes of that approval.

Tyson asked for the ZBA's opinion on Accessory Dwelling Units. Mandy Irving (Town Assessor) is having trouble determining what is considered preexisting. Tyson has been hearing about stand-alone accessory dwelling units. It would have many uses. Jim said there are limitations on the size, and owner being a resident. Web sees them as rental properties. Joe felt they should be Special Exceptions or not permitted for one reason: there are probably more apartments that have never been approved right now with people saying they didn't know they needed approval. Joe said they're all over the place.

The Planning Board would like to get the Table finalized with the help of the ZBA and asked if they could provide us with comments and get back to us. Joe indicated they have a hearing coming up and when they meet they'll give us a list of additions, problems, suggestions etc.

Hilary is going to send Jim Wieck the Google Doc and they can get one document back to her.

Meeting between PB/ZBA ended.

Other business:

Tyson talked about the Whitney Road and Hoit Road improvements. Concord brought it up as part of their CEDS. They have a ranking system and that project came out as low ranking. Representative Steven Shurtleff wrote a letter to the Planning Commission in support of the project. Tyson spoke with Mike Tardiff of CNHRPC and Tyson volunteered to write a letter in support of pushing this project up the list of importance. This wouldn't provide money, but provides a ranking to apply for grants. Jim said without objection from the Board he'll sign it. Tyson will finalize the letter and Jim will sign it at Tuesday's meeting.

Hearing no other business Kent made a motion to adjourn. Joshua seconded. Vote: Unanimous.

8:10

Jim Snyder gave a little history for the ZBA members as to what the Planning Board has

Lori Gabriella, Secretary