

Draft 10/29/09 reviewed by CC, PW, with changes incorporated.

Minutes
Town of Waldoboro Planning Board
Meeting on Revisions to Land Use Ordinance
October 28, 2009

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Roll Call

The meeting was called to order by chairman Chuck Campbell at 7:00 p.m. Other members present were Ed Karkow, JoAnn Myers, and Jody Perry. Code Enforcement Officer Patrick Wright was present. A quorum was present throughout. The audience included Andy Benore, Jeffrey McNelly, John Maguire, and Ed Rengle.

1. Minutes of October 14, 2009

On motion of Karkow/Perry, the minutes of October 14 were approved by a vote of two in favor, two abstaining (Campbell and Myers). Wright will find out if this is a valid vote.

Only Campbell and Perry from tonight's group were present at the September 10 Planning Board meeting. It was decided to re-vote the minutes of September 10 when more members are present.

2. Citizen Comments (items not on agenda) – none

3. Shoreland Zoning: How to resolve difference between Resource Protection boundaries on high to moderate value wetlands on official Shoreland Zoning map

The group discussed how to resolve differences between Resource Protection boundaries around high- to moderate-value wetlands on the State's Shoreland Zoning map and the map created by Waldoboro's mapping contractor. Wright provided an example of one wetland that showed the State's 250-foot buffer sometimes outside and sometimes inside the boundary drawn by Waldoboro's contractor. Any close calls will be verified in the field. The Planning Board had previously voted to adopt a Resource Protection zone around only high- and medium-value wetlands, and to notify affected landowners. Karkow suggested going with the State's delineation rather than the contractor's. Wright said that is how he will proceed, in notifying affected landowners.

Two wetlands were found to be under 10 acres. On motion of Karkow/Myers, the Board voted 4 - 0 to remove these from the official shoreland zoning map.

Wright said he has received a request from the Waldoboro Utility District to be exempt from the requirement not to develop land within 250 feet of a high- or medium-value wetland. Wright said there is language in the Waldoboro Land Use Ordinance exempting utilities from the requirement. Jeff McNelly was present as a Trustee of the Waldoboro Utility District. McNelly said he has a reference to a State statute that allows Inland Fisheries and Wildlife to determine that a wetland is no longer high value habitat. Wright said he plans to collect all such requests and deal with them at the same time. In his memo of October 26, 2009 distributed in advance of today's meeting, he recommends collecting these and then having the Planning Board vote to send them to the Department of Environmental Protection or Inland Fisheries and Wildlife for review, as appropriate.

4. Board of Appeals Requests

In Land Use Ordinance Article 11 Appeals, the last paragraph at the bottom of p. 11-3 (Section A 4. d) reads that "Before granting a variance, the Board of Appeals should be very careful to determine...that all variance-granting requirements of Article 11 Section C. 2. are met." Planning Board members believe that this should be changed to "all variance-granting requirements of Article 11 Section C" (without the 2). On motion of Myers/Karkow, the Board voted 4 - 0 to delete "2" after C in the bottom line of p. 11-3.

On p. 11-4, in Section C. Variances subsection 1 first line, on motion of Myers/Karkow the Planning Board voted 4 - 0 to add reference to C. 5 in the first line, which would then read, "Except as provided in C. 2., C.3., C.4. and C. 5. below,...."

Ed Rengle, a member of the Board of Appeals, presented a case for consideration of "importance factor" in determining such things as the allowable minimum setback of agricultural outbuildings from property lines. The example he gave arose when one property in shared agricultural use was split into two properties. If the former henhouse, now a storage building, is given a full 30-foot setback from the new property line, there is not enough space in front of the barn in which to yard wood, charge a tractor battery, and perform other usual farm activities. Rengle proposed allowing a 15' setback instead of 30' for "buildings and structures that represent a low value and impact to the attached property" and which have a low importance factor. Rengle said importance factor is acknowledged in the BOCA Code. He suggested that it be incorporated into the Waldoboro Land Use Ordinance, to allow for use of common sense or discretion instead of a strict interpretation of the Ordinance in certain cases having a low importance factor. Wright offered to research the matter further by consulting the legal department at Maine Municipal Association and report back.. Planning Board chairman Campbell said he prefers a strict interpretation of the Ordinance, because what is not important to one neighbor may be important to another neighbor.

5. Setting Priorities for Ordinance Review

Wright presented ten items for discussion. The order of priority will be determined at future meetings. The main aim of tonight's discussion was to see if any of the ten items can be eliminated. It was decided to delete outdoor wood boilers from the action list and handle them separately, rather than in the Land Use Ordinance.

5.1 Shoreland Zoning: This was discussed in Item 3 above. Wright expects to be able to notify abutters to high-value and medium-value wetlands by the November or December meetings.

5.2 Agriculture in Residential District: Wright noted that there is an inconsistency between Article 3 section F. Purpose of Districts and the Land Use Matrix in G. Schedule of Uses, regarding agriculture. Page 3-2 says under Purpose of Districts, “The purpose of the Residential District is to retain the rural character of Waldoboro and to protect residential property values by allowing **agriculture**, forestry, home occupations, and low density, single-family residential development.” Yet “agriculture and related businesses” are not an allowed use in the Residential District in the Matrix on p. 3-6 under Open Space Uses. (Commercial farms and gardens are also prohibited in the Residential District, under Commercial Uses.) Wright said this came about because of concern about agricultural runoff entering the Medomak river and estuary and polluting the economically valuable clam flats.

Myers, a farmer, said if the concern is about polluted runoff, one way to handle this would be by increasing the width of the shoreland setback from agricultural operations. She said it would be good to ensure that Waldoboro as a town encourages agriculture. She recommended dealing with agriculture in the Residential District sooner rather than later.

5.3 New State standards for handling OWBs are now available. Wright said the State standards have very strict provisions that prohibit any visible smoke that drifts onto another property. The Planning Board has previously discussed prohibiting OWBs in the Village District, where lots tend to be small and homes close together. Wright asked whether the Planning Board wants the Code Enforcement Officer to have jurisdiction over enforcement of State standards. His recommendation was to call the Maine Dept. of Environmental Protection if a problem is reported. Campbell’s recommendation was not to include outdoor wood boilers in the Land Use Ordinance, and revisit the matter if it becomes a problem. Other Planning Board members agreed, without a vote.

5.4 Driveway/Private Road: Wright suggests combining both in one section for clarity and to resolve inconsistencies. He said that by definition, once a driveway serves three homes it becomes a private road, and may have to be brought up to design standards for private roads before a third house can be built on it. This affects him as Code Enforcement Officer in issuing building permits.

5.5 Triggering of Mobile Home Park Standards for Non-conforming Uses: See Land Use Ordinance Article 5 Section P Manufactured Home Parks. The first sentence under Section P says that the provisions of this section apply to any expansion of existing manufactured home parks. Wright said that the Board of Appeals has ruled that bringing a larger mobile home onto a park lot to replace a smaller unit does not trigger any of the standards in Section P. Wright believes that when a new mobile home is brought onto a lot in a mobile home park is a reasonable time at which to require compliance with provisions of the Land Use Ordinance, such as marking the corners of the lot with pins, and having a house number on the mobile home. Wright thinks this section deserves a closer look.

Myers said there are four mobile home parks in Waldoboro, all but one of which predate the Land Use Ordinance and are in some respects legally-existing non-conforming uses. Recently the Planning Board has had to address the requirement that a mobile home park provide 8% of its gross site area as recreation space, with no single recreation area less than 10,000 square feet (Section P subsection 19, p. 5-19) and 10% as open space, for parks served by public sewer (subsection 5 d., p. 5-14). Wright said that according to State law, the Planning Board can accept a cumulative 10% for recreation space and open space in a mobile home park. At a recent meeting the Planning Board heard concern from several mobile home park owners about the requirement that a utility building be provided for each occupied lot within 30 days after the mobile home is set in place (first sentence

under Section P Subsection 6 d, p. 5-15). The Waldoboro Board of Appeals has found that expansion triggering this specific performance standard does not pertain to moving larger homes into an existing mobile home park. Wright said that this section merits a closer look.

5.6 Changes to Approved Subdivisions: There was discussion of under what circumstances changes to approved subdivisions need to come before the Planning Board. At question was whether or not a lot being split in a previously approved subdivision needs planning board review if that division takes place more than five years after subdivision approval. Legal opinion from Maine Municipal Association is that this division does not need to come before the Planning Board for creation of an amended subdivision plan. Wright said that if the Board wished to require this, the board needs to either write this requirement into the Ordinance, or make sure that every plan is noted this way.

5.7 Fire Suppression Requirement Clarification: Availability of sufficient water for drinking and fire suppression is a requirement under both site plan review and subdivision review. A question has arisen as to whose responsibility it is to maintain a fire pond, if one is required: the owner of the subdivision, the subdivision association, or the Town. Wright volunteered to do some research to see what other towns have done about this. He thinks it is unfair to place the burden on all townspeople to pay for maintenance of a fire pond required for approval of a subdivision.

5.8 Ordinance Review Board/Planning Board: Wright raised the question of having two distinct Boards, one for ordinance review and one for review of proposed development. He noted that there may be some members of the present Planning Board who are more interested in ordinance review and others who are more interested in planning decisions. He hopes that some members of the Planning Board would sit on the Ordinance Review Board. He questioned whether review of proposed development (site plan review and subdivision review) under the existing Ordinance is really “planning”. He has talked with Town Manager Post about this. Myers does not see the Land Use Ordinance as a planning document. Wright said the Ordinance Review Board would be the one to do more actual planning for the future of the Town, while the present Planning Board would administer the existing Land Use Ordinance.

5.9 Streamlining Development Review: goal to have the most efficient permitting process in the State. It is frustrating for both Planning Board and applicants to have to spend so much time going through checklists, some of which are repetitious. This is something Wright wants to work on.

5.10 New Use Category and/or Allowing “Contract Zoning” for Re-use of A. D. Gray Building: The former school building belongs to the Town. It is located in the middle of the Village District, where industrial uses are prohibited and only about one-third of commercial uses are permitted, according to the land use matrix in Article 3 G. This is a big building that could have a lot of potential uses. The Land Use Ordinance has no category for “cottage industry” or “non-mechanical industry”, or any other non-intensive industrial category. Perhaps such should be added. Another way to deal with the situation is through contract zoning, which is not allowed under Waldoboro’s Land Use Ordinance. Contract zoning must be administered carefully so that it is not construed as “spot zoning”, an illegal practice. Wright would like to research this and bring some alternatives back to the Planning Board for discussion.

At the last Selectmen’s meeting there was discussion of putting the building up for sale. It might be more readily saleable if potential future uses were clarified.

6. Legal Findings Training Session in Augusta, Nov. 19

Campbell said he is interested in attending. Wright will e-mail information about this training session to all Planning Board members.

7. Extending Route 1 Commercial Districts, or Creating a New Transition District

Campbell recommended making roads that branch off Route 1 into a transitional zone in which both business/commercial and residential uses are allowed. Perhaps a new "Transition District" is needed adjacent to the Route 1 commercial districts.

8. Update on Gateway 1

Wright said that 12 towns including Waldoboro have signed on to a start-up agreement for the Gateway 1 plan. A new committee is being formed. Towns are considering incorporating the Gateway 1 Plan, or parts of it, into their Comprehensive Plans. Waldoboro's Comprehensive Plan needs to be updated by 2012. Copies of the Gateway 1 Plan are available for review at the Town Office.

9. Next Regular Planning Board Meeting: Thursday, November 12, 7:00 p.m.

Wright has received input from Board members on two changes of date for November meetings. The regular Planning Board meeting will be held on Thursday November 12, because the Town Office is closed on November 11, Veterans Day. The fourth Wednesday night in November is the night before Thanksgiving. No date has yet been set for the November ordinance revision meeting.

Adjournment: The meeting was adjourned at 8:40 p.m.

Charles Campbell, Chairman

Edward Karkow

JoAnn Myers

Susan S. R. Alexander

Jonathan Perry

WALDOBORO PLANNING BOARD