

# **NORTH BERWICK, MAINE 03906**

## **MINUTES OF PLANNING BOARD FEBRUARY 7, 2013**

**Present:** Lawrence Huntley, CEO, Chairman Barry Chase, Shaun DeWolf, Geoffrey Aleva, Anne Whitten, Rick Reynolds, Jon Morse

**Absent:** Mark Cahoon

**Also Present:** Dale Hilton, Victoria MacKenzie, Evan MacKenzie, Karen Mathis, Shirley Barto, Brian Rayback, Bill McKenney, James Bacon, Charles Gaspar, Lynn Manley, Rick Stambaugh, Cathy Babcock, David Babcock, Philip Rowe, Tyler Sterling, Todd Hoffman, Laurienne Missud Martin, Beth Parker

### **1. Call to Order:**

Chairman Barry Chase opened the Planning Board meeting at 6:35 p.m.

Jon Morse was moved to full voting status.

### **2. Current Business:**

Larry Huntley, CEO stated that the first thing that should be done is to decide which proposal needs to be moved forward. He stated that they already approved most of the things from the 2<sup>nd</sup> proposal. Larry gave everyone handouts and states that these are all in reference to the 2<sup>nd</sup> proposal.

Chairman Chase asked the Board members which proposal they favored. Everyone stated that they preferred the 2<sup>nd</sup> proposal.

Rick Reynolds motioned that the 2<sup>nd</sup> proposal that Dwayne Morin submitted be advanced.

Jon Morse seconded the motion.

Vote: 5-0

Chairman Chase went through the Language changes.

### **Article 2.1 - Zoning Districts**

#### **NOW READS:**

#### **2.1 Zoning Districts**

To implement the provisions of this Ordinance, the Town of North Berwick is divided into the following districts:

- a. Resource Protection District
- b. Shoreland Limited Residential District
- c. Shoreland - Stream Protection District
- d. Shoreland - General Development I District
- e. Village Center Overlay District
- f. Village A District
- g. Village B District
- h. Village C Overlay District
- i. Residential District 1

- j. Residential District 2
- k. Farm and Forest District
- l. Commercial District
- m. Industrial District
- n. Limited Commercial District
- o. Aquifer Protection Zone A
- p. Aquifer Protection Zone B

PROPOSED:

## **2.1 Zoning Districts**

To implement the provisions of this Ordinance, the Town of North Berwick is divided into the following Districts:

- a. Resource Protection District
- b. Shoreland Limited Residential District
- c. Shoreland - Stream Protection District
- d. Shoreland - General Development I District
- e. Village Center Overlay District
- f. Village A District
- g. Village B District
- h. Village C Overlay District
- i. Residential District 1
- j. Residential District 2
- k. Farm and Forest District
- l. Commercial District
- m. Industrial District
- n. Commercial II District
- o. Aquifer Protection Zone A
- p. Aquifer Protection Zone B

Statement of Intent: To reflect the change of zone name from Limited Commercial District to the Commercial II District.

### **Article 4.1.12**

NOW READS:

#### **4.1.12 Limited Commercial District**

- a. To provide for small businesses which by their nature and character can fit in harmoniously with the existing pattern of residential and commercial uses.
- b. To provide for businesses which are likely to generate small volumes of traffic and relatively few vehicle turning movements onto and off of a busy thoroughfare, thereby avoiding potentially hazardous traffic conditions.

PROPOSED:

#### **4.1.12 Reserved for Future Use**

Statement of Intent: To reflect the elimination of the Limited Commercial District and change to the Commercial II District.

Rick Reynolds motioned to change the Limited Commercial District to Commercial II District in Article 2.1 and eliminating Article 4.1.12 definition and leaving it blank to be Reserved for Future Use.

Geoffrey Aleva seconded the motion.  
Vote: 5-0

#### Article 4.3.k-Notes to Table 4.3

##### NOW READS:

k. Government subsidized elderly housing, designed and built specifically for the elderly, shall be permitted at the ratio of 8,000 square feet of land per 1 bedroom unit and 16,000 square feet of land per 2 bedroom unit in the following districts: Village, Commercial, Limited Commercial and Residential I.

##### PROPOSED:

k. Government subsidized elderly housing, designed and built specifically for the elderly, shall be permitted at the ratio of 8,000 square feet of land per 1 bedroom unit and 16,000 square feet of land per 2 bedroom unit in the following districts: Village, Commercial, Commercial II and Residential I.

Statement of Intent: To reflect the change of zone name from Limited Commercial District to the Commercial II District.

Rick Reynolds motioned that on Article 4.3.k - Notes to Table 4.3 to make the change from Limited Commercial District to Commercial II District.

Geoffrey Aleva seconded the motion.

Vote: 5-0

#### Article 5.1.13.a - Off Street Parking and Loading

##### NOW READS:

a. Parking requirement fall into two categories on-street parking and off-street parking. On-street parking only applies to the Commercial and Limited Commercial districts. All other districts must meet required parking with off-street parking.

##### PROPOSED:

a. Parking requirements fall into two categories, on-street parking and off-street parking. On-street parking applies only to the Commercial and Commercial II district. All other districts must meet required parking with off-street parking.

Statement of Intent: To reflect the change of zone name from Limited Commercial District to the Commercial II District.

Rick Reynolds motioned to accept the change from Limited Commercial District to Commercial II District on Article 5.1.13.a.

Shaun seconded the motion.

Vote: 5-0

#### Article 5.2.9 - Residential uses in Commercial Zones

##### NOW READS:

##### 5.2.9 Residential Uses in Commercial Zones

New residential uses may be established in commercial zones only when the residential use is to occupy the upper story or stories of buildings where business is conducted at the ground level.

PROPOSED:

New residential uses may be established in the commercial zone.

Statement of Intent: To allow for residential uses with the Commercial Zones as a permitted use.

Rick Reynolds stated that it should state: New residential uses may be established in the commercial zones. Rick Reynolds motioned to accept the proposed change to Article 5.2.9 which is eliminating: to occupy the upper story or stories of buildings where business is conducted at the ground level. Also to accept the amendment of zone to zones so it should read: New residential uses may be established in the commercial zones.

Geoffrey Aleva seconded the motion

Vote: 5-0

Article 4.3.g - Notes to Table 4.3

NOW READS:

g. Any side and rear yards of any lots containing commercial or industrial uses in the Limited Commercial, Industrial, Village A or Village B Zones that abut an existing residential use, the Farm and Forest Zone or the Residential I or Residential II Zones, shall have a minimum depth of 100 feet from the side or rear lot lines. All side and rear yards abutting another commercial or industrial site shall have a minimum depth of 20 feet from the side or rear lot lines. No driveways, parking areas, buildings, storage areas, loading and unloading areas and waste collection and disposal areas shall be permitted within this buffer area. Side or rear yard setbacks may be reduced to a point that abuts the right-of-way of a railroad (including spur lines).

PROPOSED:

g. Any side and rear yards of any lots containing commercial or industrial uses in the Commercial, Commercial II, Industrial, Village A or Village B Zones that abut an existing residential district, the Farm and Forest Zone or the Residential I or Residential II Zones, shall have a minimum depth of 100 feet from the side or rear lot lines. All side and rear yards abutting another commercial or industrial site shall have a minimum depth of 20 feet from the side or rear lot lines. No parking areas, buildings, storage areas, loading and unloading areas and waste collection and disposal areas shall be permitted within this buffer area. Side or rear yard setbacks may be reduced to a point that abuts the right-of-way of a railroad (including spur lines).

Statement of Intent: To reflect the change of allowing residential uses in the Commercial Zones as a permitted use.

There was some discussion regarding this change. Larry Huntley, CEO explained that if there are 2 homes in a Commercial District and 1 home is sold to a business than they need to be set back a minimum of 20 feet but if this occurred in a Residential District than they would have to be set back a minimum of 100 feet. Anne Whitten felt that 20 feet was not far enough. She commented that the Board should look into this part further, possibly even lot by lot. Geoffrey Aleva stated that they should work it out now. The maps were reviewed by the Board members and there was further discussion.

Rick Reynolds made a motion on Article 4.3.g - Notes to Table 4.3 to propose to read: Any side and rear yards of any lots containing commercial or industrial uses in the Commercial, Commercial II, Industrial, Village A or Village B Zones that abut an existing residential district, the Farm and Forest Zone or the Residential I or Residential II Zones, shall have a minimum depth of 100 feet from the side or rear lot lines. All side and rear yards abutting another commercial or industrial site shall have a minimum depth of 20 feet

from the side or rear lot lines. No parking areas, buildings, storage areas, loading and unloading areas and waste collection and disposal areas shall be permitted within this buffer area. Side or rear yard setbacks may be reduced to a point that abuts the right-of-way of a railroad (including spur lines).

Jon Morse seconded the motion.

Vote: 5-0

Article 5.2.18 - Adult Businesses:

NOW READS:

c. Operation and Location:

1. No Adult Business shall be located:

a. In any zoning district other than the Limited Commercial District.

PROPOSED:

a. In any zoning district other than the Commercial II District between the intersections of Route 4 and 9 and Route 4, 9 and Madison Street as depicted in the Limited Commercial Zone as of July 1, 2012.

Statement of Intent: To keep the Adult Business land use within the same confines as the current Zoning allows and not into other areas of the expanded Zone.

Rick Reynolds made a motion on Article 5.2.18 -Adult Businesses on c.1.a changed to read: In any zoning district other than the Commercial II District between the intersections of Route 4 and 9 and Route 4, 9 and Madison Street as depicted in the Limited Commercial Zone as of July 1, 2012.

Geoffrey Aleva seconded the motion.

Vote: 5-0

Article 5.2.1 - Medical Marijuana:

NOW READS:

5.2.1.b Registered dispensaries must be located in Village Center Overlay District with a minimum of 200 feet from any public or private school, public library, playground or public park and a minimum of 200 feet from any church, chapel, parish house, other place of worship, daycare measured by straight line from the dispensary property line to the property line of the protected location.

PROPOSED:

5.2.1.b Registered dispensaries must be located in Village Center Overlay District as defined on July 1, 2012 or area defined as Village Overlay District as of July 1 2013 with a minimum of 200 feet from any public or private school, public library, playground or public park and a minimum of 200 feet from any church, chapel, parish house, other place of worship, daycare measured by straight line from the dispensary property line to the property line of the protected location.

Statement of Intent: To keep the Medical Marijuana Dispensaries land use within the same confines as the current Zoning allows and not into other areas of the expanded Zone.

Rick Reynolds made a motion on Article 5.2.1 - Medical Marijuana to read: 5.2.1.b Registered dispensaries must be located in Village Center Overlay District as defined on July 1, 2012 or area defined as Village Overlay District as of July 1, 2013 with a minimum of 200 feet from any public or private school, public library, playground or public park and a minimum of 200 feet from any church, chapel, parish house, other place of worship, daycare measured by straight line from the dispensary property line to the property line of the protected location.

Shaun stated that "Village Overlay District as of July 1, 2013" to "Village Overlay District as of July 1, 2012."

Rick Reynolds amended the motion to include the change of "Village Overlay District as of July 1, 2013" to "Village Overlay District as of July 1, 2012."

Shaun seconded the motion.

Vote: 5-0

Allowance of Affordable Housing within the Commercial Zone, Housing Policy #1 Action 1 and Housing Policy #2 Action 7

Make Affordable Housing a YES in the Commercial Zone and add language to ensure that affordable housing with a development does not differ significantly in appearance from the other buildings.

NOW READS:

5.2.16 Affordable Housing Standards (Village C Overlay District)

A single-family unit in the Village C Overlay District shall be deemed affordable if all the following standards are met:

PROPOSED:

5.2.16 Affordable Housing Standards (Village C Overlay District and Commercial District)

A single-family unit in the Village C Overlay District and Commercial District shall be deemed affordable if all the following standards are met:

f. The siting and appearance of affordable housing will be similar to other houses in the area.

Statement of Intent: To allow for Affordable Housing opportunities within the Commercial Zone as proposed in the Comprehensive Plan Housing Policy #1 Action 1 and Policy #2 Action 7.

Shaun DeWolf made a motion that 5.2.16 Affordable Housing Standards for Village C Overlay District and Commercial District gets changed as read in earlier.

Rick Reynolds seconded the motion.

Vote: 5-0

Prohibit drive-thru franchises and restrict drive-thru restaurants. Land Use Policy #1 Action 1.

Make Drive-in or Take out eating establishments... a NO in all zones AND add the exemption "except drive-in theaters, Auto Service stations and financial institutions."

Statement of Intent: To restrict drive-thru facilities within the Town as proposed in the Comprehensive Plan Land Use Policy #1 Action 1.

Shaun DeWolf stated that he wanted drive-thru facilities to be allowed. He stated that this prevents other businesses such as Mom & Pop Dry Cleaner, small pharmacy or Aroma Joe's to come into town. Geoffrey Aleva asked about if it could be done by Conditional Use and Larry Huntley stated that this is how it is done now.

Rick Reynolds motioned to Make Drive-in or Take out eating establishments a NO in all zones and add the exemption "except drive-in theaters, Auto Service stations and financial institutions."

Geoffrey Aleva seconded the motion.

Anne Whitten stated that Pharmacy should be added to list of exemptions.  
Rick Reynolds motioned to amend and add Pharmacy to list of exemptions.  
Jon Morse seconded the motion.  
Vote: 2-3

Rick Reynolds motioned to exclude Pharmacy and have read: Make Drive-in or Take out eating establishments a NO in all zones and add the exemption "except drive-in theaters, Auto Service stations and financial institutions."

No one seconded.

Board prefers to do as Conditional Use so they can review each one on an individual basis.

#### Large Scale Box Stores - Land Use Policy #1 Action 2

Add the following definition to Article 3.2 Definitions:

Large Scale Box Stores: Any retail business establishment having a gross floor area of 75,000 square feet or more in one or more buildings at the same location, and any expansion or renovation of an existing building or buildings that results in a retail business establishment's having a gross floor area of 75,000 square feet or more in one or more buildings except when the expansion of an existing retail business establishment is less than 20,000 square feet. Other retail business establishments on the same site as the large scale retail business establishment are not included in this definition unless they share a common check stand, management, controlling ownership or storage areas.

This land use to be a NO in all zones.

Statement of Intent: To prohibit Large Scale Box Stores within the Town as proposed in the Comprehensive Plan Land Use Policy #1 Action 2.

Rick Reynolds proposed to add the definition to Article 3.2 Definitions to read: Any retail business establishment having a gross floor area of 75,000 square feet or more in one or more buildings at the same location, and any expansion or renovation of an existing building or buildings that results in a retail business establishment's having a gross floor area of 75,000 square feet or more in one or more buildings except when the expansion of an existing retail business establishment is less than 20,000 square feet. Other retail business establishments on the same site as the large scale retail business establishment are not included in this definition unless they share a common check stand, management, controlling ownership or storage areas.

This land use to be a NO in all zones.

Shaun seconded the motion.

Vote: 4-1

#### Article 6.9.4 - Application Procedure

##### NOW READS:

b. Following the filing of a complete application, and before taking action on any application, the Planning Board, may, hold a public hearing on the application within 60 working days according to the procedures detailed in Section 6.8.5 below. Regardless whether a public hearing is held, the Planning Board shall notify all abutters, including owners of property on the opposite side of any public way that such an application has been received for review.

PROPOSED:

b. Following the filing of a complete application, and before taking action on any application, the Planning Board, may, hold a public hearing on the application within 60 working days according to the procedures detailed in Section 6.8.5 below. Regardless whether a public hearing is held, the Planning Board shall notify all abutters, including owners of property on the opposite side of any public way that such an application has been received for review. Any conditional use application for a commercial use shall require a Public Hearing under this section.

Statement of Intent: To require all conditional use applications for commercial uses to have a Public Hearing.

Shaun DeWolf made a motion to accept Article 6.9.4 Application Procedure to be changed as read in. Geoffrey Aleve seconded the motion.

Vote 4-1

Article 6.9.7 Conditions Attached to Conditional Use

NOW READS:

a. Upon consideration of the factors listed above, the Planning Board may attach such conditions, in addition to those required elsewhere in this Ordinance, that would mitigate any adverse effects on adjoining or neighboring properties, which might otherwise result from the proposed use. These conditions may include, but are not limited to, specifications for; type of vegetation; increased setbacks and yards; specified sewage disposal and water supply facilities; landscaping and planting screens; period of operation; operational controls; professional inspection and maintenance; sureties; deed restrictions; restrictive covenants; locations of piers, docks, parking and signs; type of construction; or any other conditions, restriction, or safeguard that would uphold the spirit and intent of this Ordinance.

PROPOSED:

a. Upon consideration of the factors listed above, the Planning Board may attach such conditions, in addition to those required elsewhere in this Ordinance, that would mitigate any adverse effects on adjoining or neighboring properties, which might otherwise result from the proposed use. These conditions may include, but are not limited to, specifications for; type of vegetation; increased setbacks and yards; specified sewage disposal and water supply facilities; landscaping and planting screens; period of operation; operational controls; professional inspection and maintenance; sureties; deed restrictions; restrictive covenants; locations of piers, docks, parking and signs; type of construction; the establishment of a performance guarantee to ensure compliance with any condition attached by the Planning Board; or any other conditions, restriction, or safeguard that would uphold the spirit and intent of this Ordinance.

Statement of Intent: To allow the Planning Board to require a performance guarantee be established to ensure the compliance of any condition attached to conditional use permit.

Shaun DeWolf asked if there was a definition of performance guarantee. Larry Huntley stated that it was like a bond. He stated that the Planning Board can set up the guidelines when an individual files a conditional use permit. It is a way to make sure that whatever conditions were set forth in the conditional use permit will be carried out.

Rick Reynolds motioned to accept Article 6.9.7.a Conditions Attached to Conditional Use to read: Upon consideration of the factors listed above, the Planning Board may attach such conditions, in addition to those required elsewhere in this Ordinance, that would mitigate any adverse effects on adjoining or neighboring properties, which might otherwise result from the proposed use. These conditions may include, but are not limited to, specifications for; type of vegetation; increased setbacks and yards; specified sewage disposal and water supply facilities; landscaping and planting screens; period of operation; operational

controls; professional inspection and maintenance; sureties; deed restrictions; restrictive covenants; locations of piers, docks, parking and signs; type of construction; the establishment of a performance guarantee to ensure compliance with any condition attached by the Planning Board; or any other conditions, restriction, or safeguard that would uphold the spirit and intent of this Ordinance.

Shaun seconded the motion.

Vote: 5-0

#### Table 4.3 Dimensional Requirements:

Rick Reynolds motioned to amend the Table 4.3 Dimensional Requirements as follows:

Eliminate Village Center, Commercial and Limited Commercial Districts and Create New Commercial II Zone.

On first page, under Comm II and Industrial column for Side setback should be 100/20 (d,g,2 Indus)

On all pages, The Limited Column changed to Commercial II.

On page 4-11D, Large Scale Box Stores, it is NO under all columns.

On page 4-11B, Under Drive-in or Take-out eating establishments, & Drive-in facilities offering goods and services to customers waiting in parked motor vehicles, except drive-in theaters, Auto Serv. Station - Under the Commercial District, Commercial II and Industrial District columns change NO to CU.

On page 4-11A, Under Affordable 1 & 2 family dwellings(4) under the Commercial District column, make it CU.

Shaun DeWolf seconded the motion.

Vote: 5-0

#### Suggested Zoning Referendum Questions

Rick Reynolds motioned that we use the following referendum questions:

1. All map changes to Commercial II (Limited Commercial), Commercial, Village Center and Industrial Zones along with the language changes in Articles 2.1, 4.1.12, 4.3.k, 5.1.13.a, 5.2.18., 5.2.9., 4.3.g., 5.2.16., and 5.2.1.

2. Language Change for prohibition of Large Scale Box Stores

3. Language Change for 6.9.4. Conditional Use Application procedures and 6.9.7.

Conditions

Jon Morse seconded the motion.

Vote: 4-1

Larry Huntley stated that we need to accept the map as proposed.

Geoffrey Aleva motioned to accept the proposed zoning expansion map as indicated on the plan provided by the Code Enforcement Officer.

Rick Reynolds seconded the motion.

Vote: 5-0

Chairman Barry Chase opened the meeting to the public at 8:35.

Rick Stambaugh asked about whether the proposed changes would be put on the web site before the next public hearing for people to review.

Larry Huntley stated that they would try to have them up by Monday.

Chairman Barry Chase closed the meeting to public comment at 8:38.

4. Other Business:

Next meeting will be a Public Hearing on Thursday, February 14<sup>th</sup> at the North Berwick Community Center at 6:30 p.m.

5. Review Previous minutes:

There were some corrections to be made:

1. Shaun DeWolf stated that his name was misspelled throughout the minutes. It was spelled correctly on the first page under Present but was spelled incorrectly as Shawn throughout the rest of the minutes.
2. Anne Whitten suggested that I number the pages.
3. On page 2, the third paragraph from the bottom, it should read "Dwayne did state that we need Commercial ..."
4. On page 4, the sixth paragraph down, it should read: "Imagine our surprise when I received the notice in the mail less than two short weeks ago..."
5. On page 5, the second paragraph of the letter, it should read: "We also feel it is our obligation and duty as residents of this town to protect the land that was given ..."
6. On page 6, in the last line of the first paragraph, it should read: "It would not be allowed if the plan goes through."
7. On page 6, in the last paragraph, it should read: "Funds are going away from the state so we need new ways to get money."
8. On page 7, in the sixth paragraph, the first sentence should read: "Alice Purington stated that downtown (eliminated of) South Berwick seems to hum with little shops."
9. On page 7, in the sixth paragraph, the last sentence should read: "Larry commented that it costs \$50 only for an application fee, not thousands of dollars."

Rick Reynolds motioned to accept the January 24, 2013 Planning Board minutes as corrected.

Shaun seconded the motion.

Vote: 5-0

6. Adjournment:

Shaun DeWolf motioned to close the meeting at 8:45 p.m.

Rick Reynolds seconded the motion.

Vote: 5-0

Lawrence Huntley, CEO  
Planning Coordinator

Respectively Submitted  
Susan Niehoff, Stenographer

Chairman Barry Chase

Shaun DeWolf

Rick Reynolds

Mark Cahoon

Geoffrey Aleva

Jon Morse

Anne Whitten