

1                                   **NORTH BERWICK PLANNING BOARD**

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3                                   **MINUTES OF PLANNING BOARD JANUARY 13, 2022**

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6   **Present:**           Anne Whitten, David Ballard, Scott Strynar, Mark Cahoon,

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8   **Absent:**               Chairman Geoffrey Aleva, Jon Morse, Matt LeConte

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10   **Also Present:**       Dwayne Morin

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12   1.     Call to Order:

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14   Anne Whitten will be the Acting Chairman for tonight's meeting.  
15   Acting Chairman Whitten called the meeting to order at 6:30 pm.

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17   2.     Review Previous Minutes: November 18, 2021

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19   Mark Cahoon motioned to approve the minutes of November 18, 2021 as amended. Scott Strynar  
20   seconded the motion. VOTE: 4-0

21  
22         Review Previous Minutes: December 9, 2021

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24   Scott Strynar motioned to approve the minutes of December 9, 2021 as amended. Mark Cahoon  
25   seconded the motion. VOTE: 4-0

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27   3.     Current Business:

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29   3.1    Public Hearing to review Ordinance amendments proposed by the Town Selectboard

- 30  
31         -       Ordinance 5.2.23 Performance Standards – Drinking Establishment – addition  
32         -       Ordinance 3.2 Definition change to the “driveway” definition

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34   Dwayne Morin stated that Matt LeConte was sick and he was filling in for him. As Dwayne  
35   indicated at the last meeting, the Board of Selectman are proposing one change and one change  
36   is actually from staff.

37  
38   The first change that Dwayne went over is the drinking establishment and it is really just to add  
39   performance standards for drinking establishments. He explained that a drinking establishment is  
40   a bar. What happened was back in 1997, the Town of North Berwick had a vote that allowed for  
41   the sale of alcohol on Sundays and also during the week in restaurants. The language that was  
42   put in that question, which actually was furnished to us from the State, was an error. After  
43   twenty-five (25) years, the State has decided that they will no longer honor the vote that we took  
44   because it says “restaurants”. When we voted on it, we thought when it said restaurants, it  
45   included all restaurants and the State is saying no it does not. It creates a problem because our

1 ordinance only says restaurants and we have only been issuing permits for Class A restaurants.  
2 The State will no longer honor that and in order for our current Class A restaurants to continue to  
3 serve alcohol, we will need to re-vote on the liquor laws. Dwayne said that since that time, the  
4 liquor laws have changed. Before, we used to be able to actually state in the question what  
5 establishments we would like to have the liquor laws applied to and we could also state what  
6 liquor we wanted. There were three types of alcohol: beer, wine and spirits. We could also  
7 choose from a list of establishments. The State said that they will no longer allow towns to do  
8 that, saying that liquor is liquor and liquor includes beer, wine and spirits. Also, establishments  
9 are all establishments. Even though in our zoning ordinance, we allowed for drinking  
10 establishments, the actual liquor laws did not allow for drinking establishments.

11  
12 Dwayne stated that the Board of Selectman have decided to put the two new liquor license  
13 questions before the voters at the next town meeting. The concern they had was that it will now  
14 open the doors for people to apply for a bar within our community. In reviewing our zoning  
15 ordinance, even though we do have provisions for a drinking establishment, it is allowed in two  
16 zones currently. It would be allowed in the industrial zone and the commercial zone. Dwayne  
17 provided a copy of the chart for reference. He stated that one thing it does not provide is  
18 performance standards. In keeping with the same theme as the medical marijuana ordinances that  
19 we have in place, the Board felt it would be proper to also have drinking establishment standards.  
20 Dwayne said that they looked at all surrounding towns around us and found that all towns that  
21 have bars and allow bars, have performance standards. Dwayne stated that we are an exception  
22 because we never had to worry about it before because bars were not allowed within our  
23 community. The anticipation is that those liquor license questions will pass when we bring them  
24 before the voters, so the Board is creating questions looking to establish performance standards.  
25 Basically, we will be following the same standards for medical marijuana.

26  
27 Dwayne said that the ownership has to be in their own name or if not, they have to obtain written  
28 permission from the property owner. There will have to be security and oversight requirements  
29 such as alarm systems, exterior security lights, video surveillance and locks and bolts on their  
30 facility. They will also have to comply with all health and safety codes as established by the  
31 Town. We kept the same setbacks and sensitive areas as we have for medical marijuana. There  
32 will have to be 1000 feet from any public or private school or daycare provider and 300 feet from  
33 a park, playground or church. That is based on straight-lines from property lines, not door to  
34 door. It is the same as our medical marijuana requirements.

35  
36 Dwayne stated that the Board decided to add two additional things that we do not have with  
37 medical marijuana. These actually came from surrounding towns that have significant bar  
38 establishments within their communities. The first one is that no new drinking establishment  
39 shall be located in a building, structure, or area of land which is closer than 400 feet, measured in  
40 a straight line without regard to intervening structures or objects, to any other building, structure,  
41 or land which is: a) occupied by a drinking establishment; or b) occupied by any establishment  
42 which serves alcoholic beverages for consumption on the premises. The second addition would  
43 be that no drinking establishment shall be located in a building, structure, or area of land which  
44 is closer than 100 feet from the boundary of a residential zoning district. Because commercial  
45 zoning district does touch upon some residential zones, the concern was that a bar could be put  
46 right next to a housing development and we want to keep at least a 100 foot setback.

1 Dwayne said that both of those changes came right out of Sanford, Old Orchard Beach,  
2 Kennebunk, Kennebunkport and that pretty much all of the towns along the coast have this  
3 similar provision within their ordinances.

4  
5 Anne Whitten asked if the building cannot be any closer than 100 feet or the property line cannot  
6 be closer than 100 feet. Dwayne answered that the building cannot be. Anne asked if they could  
7 have a parking lot that abuts right up to a person's house. Dwayne answered that no part of that  
8 establishment can, so no building, structure or area of land can be closer than 100 feet. The  
9 parking lot would be considered an area of land.

10  
11 Dwayne stated that they are trying to be proactive thinking that the two liquor questions that will  
12 be presented at town meeting will pass and they are looking at protections for the community.  
13 Dwayne stated that there are already people who are looking to establish a tavern or a bar in our  
14 community.

15  
16 Dwayne then said that the next zoning question comes from staff and that he and Roger started  
17 looking at this provision back right before COVID and then they decided to table it. It is an issue  
18 that needs to be addressed. He said that basically what happened was that back when they did  
19 their last Mandatory Shoreland Zoning update, which he believes was about 8 or 9 years ago,  
20 they had to include all definitions of mandatory zoning within our zoning ordinance. What we  
21 did not realize was that it actually changed the definition of a driveway within our ordinance.  
22 The idea was that we just wanted to change the definition of a driveway within our shoreland  
23 zoning and still maintain the driveway definition that we had within our ordinance anyway, but  
24 we did not. We eliminated that one and replaced it. This question is to bring us back to where we  
25 were before mandatory shoreland zoning, but still have our the mandatory shoreland provisions  
26 within the definition.

27  
28 Dwayne said what that would do, would be to allow a driveway to be defined as a vehicular  
29 access -way serving two single-family dwellings or one two-family dwelling unit, or less.

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31 Dwayne said that with the new Shoreland Zoning definition you are not allowed to have a  
32 driveway longer than 500 feet, so the definition was changed to:

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34 Driveway: a vehicular access-way less than five hundred (500) feet in length serving two single-  
35 family dwellings or one two-family dwelling, or less.

36  
37 Dwayne stated that driveways outside of the shoreland zone could be longer than 500 feet.

38  
39 Scott Strynar indicated that when you read that question as serving two single-family dwellings,  
40 it maybe should first read a single-family dwelling. Dwayne said no, because the driveway can  
41 serve up to two single-family dwellings. Scott then said it should say "up to". Dwayne said that  
42 "or less" is at the end but they could fix the wording.

43  
44 The proposed question would now read:  
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1 Driveway: a vehicular access-way serving up to two single-family dwelling units or one two-  
2 family dwelling unit. In the Shoreland Zoning Districts, the driveway length is restricted to no  
3 more than 500 feet in length.

4  
5 Regarding the Ordinance 5.2.23 Performance Standards – Drinking Establishment – addition,  
6 David Ballard asked if these changes would be waiverable or unwaiverable. Dwayne stated they  
7 would be unwaiverable. They would be set in stone. David inquired about adding conditions to  
8 an establishment as the Planning Board could normally do. Dwayne gave an example: If  
9 someone wanted to open up a bar and came before the Planning Board, they would have to meet  
10 all the requirements, but the Planning Board could impose additional provisions as well, such as  
11 tinted windows so no one could see in, the Planning Board would have the authority to do that  
12 because it would be a conditional use.

13  
14 David Ballard then inquired about what Dwayne meant when he said that he thinks this would  
15 pass and Dwayne advised that when the last liquor law change was made, roughly out of the 300  
16 people that voted, maybe 6 voted against it. If this question fails, it means no alcohol would be  
17 served within our community. Dwayne believes that the voters will allow alcohol to be served in  
18 establishments within our community.

19  
20 Anne Whitten indicated that she is not opposed to someone opening up a tavern or bar but is  
21 somewhat concerned about the noise of people leaving a bar. She is wondering if that leaves the  
22 Planning Board in an awkward position by allowing them to put restrictions on a bar since most  
23 of those establishments would be right in town because it is mixed use. Dwayne mentioned that  
24 the 100 feet is not from a house, but that it is from a residential district. A good example is since  
25 Portland Street is a residential neighborhood but the commercial district abuts up against  
26 Portland Street so if someone wanted to use one of those properties on Portland Street, it would  
27 have to be 100 feet away from the property. Anne inquired if there will be any guidance for the  
28 Planning Board as far as noise or hours. Dwayne stated that is already in our Ordinance, under  
29 Section 5 that talks about noise and talks about operating hours. The Planning Board does have  
30 the authority, depending on what they feel is a fair and reasonable set of standards, to apply  
31 conditions to these types of organizations or establishments depending where they are in our  
32 community. Dwayne stated that the land areas that these establishments will be allowed within  
33 our community are quite small and there will only be a handful of buildings within this  
34 community that will meet these criteria. It is primarily because we have parks and churches in  
35 our downtown area where the commercial zone is.

36  
37 David Ballard inquired about the age requirement for alcohol and Dwayne indicated that the  
38 State determined it is 21.

39  
40 Anne Whitten inquired if there is anything related to outside bands. Dwayne stated that there is a  
41 noise ordinance which would cover that. Dwayne stated that our ordinance does not allow for  
42 entertainment in those types of facilities unless they are inside, so no outside entertainment. It  
43 actually does not state that, which means it is not allowed.

44  
45 Dwayne said that eating establishments that sell alcohol would not fall under these sub-set rules.  
46 This is for where only alcohol is being served. Restaurants are in a different category; they are

1 considered what is an eating and drinking establishment and what the Board felt that typically  
2 those types of facilities do not have the alcohol abuse that potentially a tavern could have.

3  
4 Scott Stryner inquired if these taverns and bars would be able to sell food. Dwayne stated that if  
5 they sell food, then they would have to get additional licenses to be a restaurant. He said a tavern  
6 could sell certain food and not be a restaurant such as pretzels or peanuts. The State actually  
7 defines what is considered food and has some heavy-duty laws regarding same.

8  
9 Anne Whitten asked if there was anything else for tonight. Dwayne requested that the Planning  
10 Board vote to move these two things forward. He stated that he hopes the Planning Board would  
11 be in support of the changes that the Selectman have moved forward.

12  
13 David Ballard motioned to move forward with the ordinances proposed (Ordinance 5.2.23  
14 Performance Standards – Drinking Establishment – addition and Ordinance 3.2 Definition  
15 change to the “driveway” definition). Mark Cahoon seconded the motion. VOTE: 4-0

16  
17 4. Other Business:

18  
19 Dwayne stated that going forward, there are some larger projects that will be coming before the  
20 Planning Board, on top of the two large projects that they are working on. He said there will be  
21 additional ones that have been submitted to the Town. Dwayne did state that the next couple  
22 months will most likely be busy. He said he will not put two large projects on the same meeting  
23 so the Board is not there until 11:00 p.m. Dwayne said he would do large projects, maybe with  
24 some smaller projects also, to move these projects along but not create an overall burden for the  
25 Board as well during those meetings.

26  
27 Anne Whitten would like to thank Sue Niehoff for her 9 years here on the Board as the  
28 Stenographer and she and the Board hope that they weren't too hard on her and they wish her  
29 well.

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31 5. Adjournment:

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33 Mark Cahoon motioned to adjourn the meeting at 7:10 pm. David Ballard seconded the motion.  
34 VOTE: 4-0

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36 Matthew LeConte  
37 Planning Coordinator

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39 Respectively submitted,  
40 Jennifer Berard, Stenographer

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2 Chairman Geoffrey Aleva  
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7 Jon Morse  
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