

## **NORTH BERWICK PLANNING BOARD**

### **MINUTES OF PLANNING BOARD JANUARY 27, 2022**

**Present:** Anne Whitten, David Ballard, Scott Strynar

**Absent:** Chairman Geoffrey Aleva, Mark Cahoon, Jon Morse

**Also Present:** Matt LeConte, Joe Carr, Andrea Spiegel, Austin Gregory, Julie McElhaney, Chelsi Van Patten

1. Call to Order:

Anne Whitten will be the Acting Chairman for tonight's meeting. Acting Chairman Whitten called the meeting to order at 6:33 pm.

2. Review Previous Minutes: January 13, 2022

Scott Strynar motioned to approve the minutes of January 13, 2022 as written. David Ballard seconded the motion. VOTE: 3-0

Anne Whitten inquired about putting the agenda on line with the Minutes going forward. Matt explained that Dwayne is the person who puts the Minutes on line and stated that he would discuss this further with Dwayne.

3. Current Business:

3.1 Country Estates, LLC (Joseph Carr)  
Country Way, Map 004 Lots 36 & 37

Request to amend a Planning Board Subdivision approved property lot line in Country Estates.

Joe Carr stated that this was the second time he has been before the Board, with the first being a year and/or a year and a half ago. He made an adjustment to one of the back lots. It was a simple lot line adjustment between the two lots. It was to make more room for Lot #36. A lot of the homes have the garage in the front of the house or behind the house because there is not enough room length wise to put it like he has done prior. Regarding Lot #36, he explained that the retention pond was in between so he does not have the depth to put the garage in the front or the back. He explained that Lot #37, which is the lot next door, has plenty of room where he can put the house the long way with the garage off the side and that keeps it out of the retention pond.

Joe showed each of the Board members a closer look at the plan and they examined the change that he had made. There was discussion about how it was a minor adjustment.

David Ballard motioned that the Board approve the request to amend the Planning Board Subdivision approved property lot line in Country Estates, Country Way, Map 004 Lots 36 & 37. Scott Strynar seconded the motion. VOTE: 3-0

Joseph Carr then requested that the Board sign a copy for recording at the Registry and the Board Members did that.

3.2 Andrea Spiegel  
52 High Street, Map 22 Lot 16

Conditional Use Permit request: Applicant proposes to build a 648 Sq. Ft. In-Law Apartment attached to a proposed new accessory detached garage.

Andrea Spiegel answered Anne Whitten's question regarding building a garage which she answered that she was actually building a new garage and that the accessory unit would be attached in the back of that garage. Anne Whitten asked her if she would be using the garage and apartment now as the application states "A two-car garage with an accessory apartment for myself at retirement to age in place". Andrea stated that as soon as the structure is built, she would be retiring. Anne asked if Andrea owned the home and she said she does. Matt referenced a copy of the Deed which he provided the Board.

Anne referenced an earlier request and asked what the difference was regarding that submittal. Matt stated that the biggest concern in the prior submittal was that the shed was smaller than the house and they were not in proper proportion. Matt clarified that Andrea is proposing to apply for one permit which is reasonable so long as it meets all the criteria of 5.2.20, which is the In-Law Accessory Apartment Standard. Andrea stated the reason she is applying for one permit is because the structure is pre-fab so it all comes together. Scott asked if the garage gets built in place and then the living area gets added to that. Andrea stated that everything gets built at the same time. She stated that there is a 4-foot foundation under the apartment and the garage has a slab which was part of the equation and having it all done at the same time. Matt stated that as far as the foundation, that will not meet the building code. He stated that the garage foundation is going to have to go down at least four feet below grade. He said it does not have to do with the approval necessarily, because the approval is more for the use but that can be discussed further. He said she cannot have the accessory dwelling unit that is properly supported and cannot be moved by frost and the garage piece possibly being able to be moved by frost, unless it is protected in another approved way.

Scott Strynar asked if the water and electricity and sewer connection were coming from the main house. Andrea stated it was. Scott then asked how this unit would be heated. Andrea stated that it would be forced hot air/heat pumps. Scott asked if they were wall mounted. Austin Gregory, who is the Backyard ADU Representative (the company who put the plans together for Andrea), stated that it was a ducted unit so the one unit in the crawlspace that has ducts to every room. He said it could also be wall-mounted but they had not made a decision on that yet.

Anne Whitten read Requirement 4: “*The creation of the apartment shall not alter the single-family character of the property.*” Anne stated that it does alter it. David Ballard stated that he was trying to go over in his head how this is different than the submission before, if it is not a pre-existing structure, who stated this is basically building a house. Anne Whitten stated it is in fact altering the single-family character of the property.

Scott Strynar said he feels the face of this has two garage doors on it and from the road, looking at the front, it looks like a garage with some sort of workshop off of it. He thinks this is definitely better than what was presented before with the shed and so forth. To him, this looks more like a garage. Anne Whitten stated this is still putting a second home on the property and it is not adding it to the top of the garage, it is not adding it inside the barn, it is not adding it on part of the house but it is actually adding a second family home to the property. Scott Strynar stated that if it was not a living space, if it was a workshop instead, and someone wanted to build a garage with a workshop attached, there would probably be nothing wrong with that. And after the fact, if they wanted to convert the workshop to the living space, it would probably be acceptable. David Ballard talked about if there was a garage already sitting in that location, like a two bay garage, would we allow this same structure to be added on the back of the garage and not change the structure to the single-family unit? He wonders if that that opens up the precedence for someone building on to a single-family dwelling with another family dwelling structure. Scott Strynar believes that looking at this from High Street, because the main house is just one big building with a barn attached to it, it just looks like a garage. He views this more as a garage. Anne Whitten stated again that it does alter it.

David Ballard took the same concept of someone who has 5 or 10 acres and they do the same concept, it is not going to change any view from the road, to Scott’s point of esthetics, but is that against or with the discussion of the articles and how the property would change. Scott Strynar stated that if this was a two-car garage with an apartment above it and not on the back of the garage, would that be okay. Anne Whitten said that if this was a two-car garage that was already there, and they came in and said they wanted to put an apartment on top of that two-car garage, then yes, that is not altering or changing the character at all. Anne Whitten believes that the concept of this whole in-law accessories, when we actually allowed this in North Berwick, was that if you want your in-laws, you find someplace within your building to put your in-laws, you don’t build a whole new house.

Andrea Spiegel presented a plan to the Board where it was basically the same kind of thing that was approved and built in North Berwick. It was a two-car garage, which they got rid of one of the bays and the rest was a living space. Andrea said the problem with that is, the percentages to the garage and the accessory structure do not work. By doing what she is doing, she is making ADU less than 50% of the garage and the plan she is referencing is not like that. From the exterior, there is a small wing in two places, that obviously look like there is an entrance to a home with a little porch. She doesn’t understand why this is any different from what she is proposing. Anne told her it was because it was an existing building.

Austin Gregory asked if they built this building and just came back, spent the extra money and time to go through permitting to build the garage with a workshop behind it, would that be okay. He stated the living space is not even changing because it is the same amount of sewer, the same

amount of water and electricity because Andrea is going to live with her son no matter what. David Ballard said he does not want people wasting money either and he stated he has an in-law space at his own residence and would like to make it as simple as possible but the rules and how they were written need to be followed and interpreted down the road the same way. They stated that they got to this point before with discussions about what these actually mean as accessory and pre-existing structures.

Matt suggested to the Board that they look at a copy of each of the ordinances to see how the project meets the criteria and what they believe the project meets and maybe what it does not meet in relation to 1 -7 and when they get back to the criteria of it, which is #4, we can go back to discuss how the Board sees the intent of this ordinance. Anne Whitten referenced a letter from the lawyer from the last one, that gives an explanation. Scott Strynar stated that that letter is geared basically to the shed option that they had and the size and use of the structure. Andrea does not feel that relevant. Scott Strynar stated that each Board member has their own opinions and to him, it basically looks like a garage. He does not agree that this looks like another single-family home but he agrees with Matt to go over items 1 -7 and see what we think on each one. Matt stated to the Board that if they see something different or there are multiple items that are not being met, it would be end of the discussion and there will need to be modifications but he thinks the proposal to build an accessory structure should not be a stopping point in the approval. He feels so long as the proposed structure meets the intent of the ordinance, that should be okay, you should not have to build a garage, and then add on to the garage, top or bottom or inside. He doesn't think that is what the ordinance is saying, it does not have to be physically there. That is the only thing that he does not agree with.

Scott Strynar referenced an earlier project that came before the Board where they were having a single-family home built and then they came to the realization that they needed to add an in-law apartment inside. It was a new house being built and they were adding an in-law apartment to the structure, in process while they were building it. He views this project like that.

David Ballard said if the Board does come to agreement on certain interpretations of what a pre-existing structure is, they should be discussed so they are not going against someone's opinion but he agrees with what Scott is saying, in that it is a much better project as far as esthetics. He is more concerned with the fact that this may allow a new precedent of someone having a property with a house on it, have 5 acres or more and put up several structures to maybe allow multiple in-law apartments on the same property. He wants everything going forward to be consistent and that the Board stay standardized. To him, to get that standardized, they need to understand the meanings.

Anne Whitten stated that this is a totally separate building and not like the one that Andrea is referencing in that the garage was in place which was renovated. Andrea asked that because what she is doing is not stick built, and she cannot just put up a garage and then after the fact, create something inside the garage, that it will not be approved. Anne read again "*The apartment shall be created within or attached to a single-family dwelling or accessory structure*". Andrea then said that the accessory structure is the garage. Anne said but there is no accessory structure there right now.

Andrea is now proposing a 650 square foot two-car garage which is the accessory structure to the home. The only difference here is because this is a modular, we have to do it at the same time. Anne Whitten does not want to make a decision and would like to talk to the attorney. David Ballard does not believe the attorney will give us an answer or tell us what our opinions are on how the articles read in terms of interpretation. He believes it is a gray area for him. He said he could go either way with this one. Anne stated she would love to approve it but because she is on the Planning Board, she has to abide by the rules.

Scott Strynar asked Andrea how big the lot was. Andrea stated that it was 2 ¼ acres and could not be subdivided. Scott again said it looks like a garage with an addition on it from the road. There is a drive that identifies the house, a drive that sweeps around the back and there will be a garage in the rear of the property. He does understand Anne's point that if you add it up, it is a stand-alone residence but an accessory apartment above a garage is the same thing but configured differently. David Ballard discussed the meaning of a single-family home, being the same family and Andrea stated she has given and will give any assurance that the Board wants to prove that it is never going to be rented and always kept in the family. Scott Strynar said unfortunately there is no way for the Board to "police" that.

Austin Gregory referenced a single-family home where someone rents out their master suite on Airbnb. He stated that what is bothering them is that there is a precedent for this exact same thing that has already happened but for some reason, even after a year of trying to make it work within your guidelines and talking, it is for some reason still not happening and this is someone's livelihood. David Ballard does not believe there is a precedent for the same thing, he says it is close but there are differences. Scott Strynar stated that if they wanted to build their two-car garage and put an L off the back for the living space so it is more compact and not at a T, that may look a little more than a large garage. The character of the referenced garage and the character of their design is different. Andrea stated that in the referenced design of someone else, which the structure is quite a bit bigger than what she is proposing, the proportions of the garage and the dwelling unit are different. She is trying to stay within the proportions and if she moves the living space inside the garage, she just has to start expanding the size of the garage and it becomes a never-ending expansion and comes with extreme cost. Austin Gregory said that the other plan is a one car garage with a massive house around it and theirs is not. Andrea stated that she tried to do the one car garage but that was shot down. Matt said that this is at least the third rendition that Andrea has presented. Andrea said the one car garage proposal was shot down because of the proportion and now she has a proposed a two-car garage and it is still being shot down.

Scott Strynar stated that #4 of the ordinances is really the question, whether it is a single-family home or two single family homes on one lot. Matt said maybe it would make sense to review the definition of an accessory structure. He stated it is being proposed as an accessory structure and an accessory dwelling so he is asking whether this proposal meets the accessory structure and use, setting aside for a moment, that they all agree that this is not constructed already. He then said the ordinance 5.2.20 (in-law accessory apartment standards) is not necessarily stating right now that it has to be to an existing structure, although it could in the future state "to an existing structure".

David Ballard stated his logic is that is not attached to the main house, it is free standing, but it makes sense everywhere else to him. Scott Strynar asked if they built the two-car garage, then came back in a year from now and requested an in-law apartment by adding something on to it, because the garage is now already there, what is the difference.

Matt stated that this building, without its uses, is an accessory to the principal structure, in concept. He said that #3 allows and states “attached to a single-family dwelling or attached to an accessory structure” so although this is not constructed, he feels the garage should be thought of as being there, because it could easily happen that the garage is built and then they come back to add on. It would be a much longer process and probably more costly to come back, put more foundation and send all the contractors to and from a whole second round. He then referenced #4, if this structure as viewed by the Board does not meet the characteristic of a single-family property, he would like to know what sort of modifications should take place for this project and any coming forward to satisfy that requirement. Anne Whitten believes the requirement needs to be clearer than it is.

Anne Whitten then inquired about the use of the two-car garage and if the property owners will be using it. Andrea said yes, especially for storage or vehicles. The barn there now cannot have cars driven in it. Matt then again stated he thinks it would make sense to go through each question and make a general vote and then whatever questions are left, the Board could then decide to table this and request legal comment or interpretation. Anne Whitten stated that she thinks everything else is fine other than that one line she referenced. She stated she would like more time to think about it. Andrea stated that this project is only 650 feet and is extremely small. She stated she cannot financially expand the project to put up a garage, then have another crew come back later to add on. Anne Whitten then said to Andrea to give her two weeks or go with a vote how the rest of the Board would vote. Austin Gregory said he and Andrea would love to have the other Board members vote and that although this is two weeks for the Board, it is a year and two weeks for them and they’ve been waiting to get this done and during this pandemic, costs are much higher than they were since Andrea first came to the Board to start this project.

Austin Gregory asked how many board members are missing at this meeting. Scott Strynar stated there are five board members and one alternate right now for a total of six members on the Board.

Anne read the last part of the verbiage in the ordinance “*A deck or similar extension of the principal structure or a garage attached to the principal structure by a roof of a common wall is considered part of the principal structure*”. Austin Gregory stated that is clarifying that is not an accessory structure, that is part of the main structure and that was in the lawyer’s comments originally. Matt stated that anything attached to this proposed detached accessory building, regardless of what is in it, is then accessory to that.

Scott Strynar stated that if it was a garage and then was added on to it, there probably would not be a problem. Matt asked how does the Board see what criteria make this proposal not meet the characteristic of a single-family dwelling. Scott stated this could be viewed as another home on the property because of the design of it. Andrea stated the one that was previously approved had two parts coming off the garage and is not much different than what she is proposing.

Matt asked the Board what they see as being next step. Anne stated she would like to sleep on it and give it more thought. Scott Strynar asked if there may be a different opinion from the other Board members Jeff, John or Mark.

Scott Strynar motioned that the Board table the request by Andrea Spiegel for a conditional use permit on 52 High Street, Map 22 Lot 16 until the next meeting. David Ballard seconded the motion. VOTE: 3-0

Anne Whitten and Scott Strynar asked if this could be placed first on the agenda for the next meeting.

Scott Strynar motioned that the Board ask the town attorney to give an explanation or definition of a single family and an accessory structure with an ADU attached, stating the difference between the two and to see the proposed plan to understand what they are asking. David Ballard seconded the motion. VOTE: 3-0

3.3 Julie McElhaney  
53 Clark Road, Map 005 Lot 05

Conditional Use Permit request: Applicant proposes to open an in-home Occupational Therapy Office in a portion of the existing single-family home.

Julie McElhaney introduced her daughter, Chelsi Van Patten who is an Occupational Therapist. Julie owns the home and they are looking to use one of the large existing rooms as a business. It is a great location of the house and has two entrances and there is no construction that is needed. Scott Strynar asked if Matt had visited the site and Matt stated he has not, but because it is a business there needs to be a public hearing. Matt feels it meets every condition of the requirements and the Board can, if they so choose, request a site walk. Matt asked the applicant for some additional information such as hours of operation, which is stated in the general narrative that Julie provided. Scott Strynar asked if there needs to be an available restroom. Matt stated that it is not required as far as the ordinance goes but this business is basically one person coming in at a time, unlike a daycare where children or people are there all day. Chelsi Van Patten explained that she helps people become independent and function with therapy.

Scott Strynar looked at the photos and inquired about the entrances to the building. He asked about steps being there. Julie stated there were four steps. Scott Strynar asked about accessibility if some was elderly or disabled or had mobility issues, is an issue getting in and out of the business. Matt stated it is only a requirement in certain businesses with special accommodations. In this particular case, she could go to the home of the client who could not access her office. Matt stated that this business is not necessarily open to walk in clients like Subway, but it is scheduled with clients so if there are mobility concerns, she could go out and assist or actually go to an alternative location and that suffices the ADA. If the Board sees it important, a site walk can be scheduled prior to the next meeting or sooner if desired. David Ballard stated he did not feel a site walk was necessary in this particular case. Scott Strynar did state there were several photographs, the space is big enough, it has level hardwood floors, there are windows, and ways to get in and out, they are not selling anything. Scott's only question was accessibility. Anne

Whitten asked Julie and Chelsi if they were going to have a sign. Julie stated they do not have a sign at this point and they decided to not have a sign. Scott asked if they had a mailbox that clearly identifies the address and they said they did.

Anne inquired about abutters and stated there are eleven abutters. Anne stated that they have to pay for mailings to send out registered letters. Matt stated that he would let them know the cost of the Public Hearing Notice by Monday. Anne stated that the average rate to place ad in a newspaper is \$78.00. Matt said that the amount would be remarkable less to put it in the Sentinel. Anne then stated she found that it would be about \$10.00 for a five-line ad in the local Sentinel and then it is about \$10.00 to send out a registered letter. There are eleven people which would roughly cost about \$150.00 for everything. Matt stated he would let Julie know the exact cost by Monday.

David Ballard motioned that the Board accept the package proposed and set a public hearing on or about February 24, 2022 with an escrow to be determined by the Code Enforcement Officer at a later date. Scott Strynar seconded the motion. VOTE: 3-0

4. Other Business:

Matt referenced the three ordinance changes and how after public hearing the proposed amendments go to legal or review, and legal came up with changes and the changes are specifically:

**Proposed Zoning Ordinance Amendments to Enact Drinking Establishment Performance Standards**

The new language states:

**D. Setbacks from Sensitive Uses:** Unless otherwise permitted by 28-A M.R.S. § 701, No Drinking Establishment shall be allowed within 300 feet of any existing public or private school, school dormitory, church, chapel, or parish house (each a “Sensitive Use”), with the distance measured from the main entrance of the premises of the Drinking Establishment to the main entrance of the Sensitive Use proposed within the 300-foot setback of an existing Drinking Establishment shall be required to sign a form, which may be obtained from the Code Enforcement Department, which indicates that they are aware that an existing Drinking Establishment is located within the setback area.

**Intent:**

Due to a recent review of the Maine Liquor Laws, the Town of North Berwick is now required to either allow for all types of liquor to be served in all establishments and not limit the type of establishment if the town allows any consumption on premises. This Zoning Ordinance change establishments standards for Drinking Establishments that are consistent with other standards contained within the Zoning Ordinance.



Anne Whitten asked what the setback was prior. Matt said he recalled there were three different separation distances. From parks, schools and churches and from residential. Scott Strynar asked who signs the form now, the sensitive use or the drinking establishment. The Board read the language again and determined the sensitive use (church, school, etc.) shall be required to sign a form. So, if a new church or school came in, they would have to sign a form that states they are accepting the fact that the drinking establishment is already there.

Matt stated that at a later date, perhaps the November vote, there is a future proposal that will come before the planning board would be to have park overlay districts for each of the parks because that was the biggest concern in the commercial zone. To create a consistent separation from certain parks, an overlay zone would be proposed to go over each of the many parks in the Town with 300-foot extensions.

David Ballard referenced the “Intent” and the Board talked about how the Town cannot differentiate the types of alcohol. If it has alcohol in it, it is liquor. David stated as it is written now, there is no “either”. Scott said maybe the word “either” should be omitted. Matt stated that since the law has changed, either a business is allowed to serve and sell alcohol or they opt out completely. Now a bar can be approved so long as it makes its way through the zoning ordinance, in the allowed zone, meeting all the criteria that has to come before the Planning Board anyway. Before, businesses such as Johnson’s could serve beer and wine and hard liquor but they served food as they are a restaurant. The law now says a drinking establishment allows less of an eating establishment to serve any type of beer, wine or spirits and they can serve any type of alcohol and not serve food.

### **Proposed Zoning Ordinance Amendments to Revise Driveway Definition**

Matt referenced the change regarding the language of the driveway definition and how the attorney stated the language that was going to be removed has to stay.

*The Zoning Ordinance of North Berwick, Maine is proposed to be amended by removing the words shown in strikethrough form and adding the words shown in the underline form to the definition of “Driveway” in Article 3, section 3.2, as follows:*

**Driveway:** a vehicular access-way ~~less than five hundred (500) feet in length~~ serving up to two single-family dwellings or one two-family dwelling, ~~or less,~~ except that in the Shoreland Zoning Districts, a driveway is a vehicular access-way less than five hundred (500) feet in length serving two single-family dwellings or one two-family dwelling, or less.

**Intent:** To remove the length restriction for a residential driveway except in the Shoreland Zoning districts as required by the State of Maine Mandatory Shoreland Zoning Law.

The Board referenced their last meeting minutes to determine what had been discussed and proposed and read the new language. Scott Strynar stated they are only giving a length restriction

to driveways within the Shoreland Zone, which means if you are not in the Shoreland Zone, you do not have a length restriction on your driveway.

### **Proposed Animal Control Ordinance Amendments**

Matt referenced the change regarding the language of the Animal Control Amendment.

*The Town of North Berwick Animal Control Ordinance is proposed to be amended by removing the words shown in strikethrough form and adding the words shown in underline form, as follows:*

...

**1.10 Duty to dispose of waste:** It shall be a violation of this Ordinance for any owner to fail to immediately remove and dispose of any feces left by the owner's dog on any sidewalk, street or publicly owned property.

**1.10 1.11 Violations:** Any person found in violation of sections 1.1, 1.2, ~~and 1.3~~ or 1.10 shall be subject to a fine of not less than \$10.00 and not more than \$100.00 for each offense. Any fine collected shall inure to the Town of North Berwick.

~~1.11~~ **1.12** If any part or parts of this Ordinance are for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this Ordinance.

...

***Intent:*** To amend the ordinance to require any person who owns, possesses or controls a dog to properly clean up their dog's feces on any publicly owned property including streets, sidewalks.

David Ballard motioned to move forward with the Ordinance proposal as presented today. Scott Strynar seconded the motion. VOTE: 3-0

5. Adjournment:

Scott Strynar motioned to adjourn the meeting at 8:24 pm. David Ballard seconded the motion. VOTE: 3-0

Matthew LeConte  
Planning Coordinator

Respectively submitted,  
Jennifer Berard, Stenographer

Chairman Geoffrey Aleva

Jon Morse

Anne Whitten

David Ballard

Scott Strynar

Mark Cahoon