

## NORTH BERWICK PLANNING BOARD

### MINUTES OF PLANNING BOARD FEBRUARY 9, 2023

**Present:** Chairman Jon Morse, Mark Cahoon, David Ballard

**Absent:** Scott Carpenter, Anne Whitten, Justin Perry

**Also Present:** Matt LeConte, David Brauning, Maria Brauning, Georgia Cahoon, Ernie Houle, Mark Rouillard, Kelly Rouillard, Peter Dionne, Marci Dionne

1. Call to Order:

Chairman Morse called the meeting to order at 6:30 pm.

2. Review Previous Minutes: January 12, 2023

Mark Cahoon motioned to approve the January 12, 2023 Minutes as written. David Ballard seconded the motion. VOTE: 3-0

3. Current Business:

3.1 Public Meeting:

Review of proposed Zoning Ordinance Amendments and Subdivision Ordinance Amendments. Copies of the amendments can be requested from the Code Enforcement Officer or viewed on the Town website.

Matt stated there are going to be five (5) questions that amend the current zoning ordinance and subdivision ordinance amendments.

Chairman Morse stated he would like to go through each question/amendment and open it up to the public for questions, discussions and input.

**Question #1: Shall an ordinance entitled “Proposed Zoning Ordinance Amendments to Amend Shoreland Zoning setback from 100 feet to 75 feet” be enacted?**

*All new principal and accessory structures shall be set back at least seventy-five (75) feet, horizontal distance, from the normal high-water line of great ponds classified GPA and rivers that flow to great ponds classified GPA, seventy five (75) feet, horizontal distance, from the normal high-water line of other water bodies, tributary streams, or the upland edge of a wetland. In the Resource Protection District the setback requirement shall be 250 feet, horizontal*

*distance, except for structures, roads, parking spaces or other regulated objects specifically allowed in that district in which case the setback requirements specified above shall apply.*

*The intent of this is amend the Shoreland Zoning minimum setback from 100 feet to 75 feet to be consistent with current Maine Department of Environmental Protection Standards developed for Shoreland Zoning.*

Chairman Morse opened the public hearing at 6:38 p.m.

Ernie Houle, who lives on Valley Road, stated he lives in the farm and forest district and wanted to know if the brooks that connect to main bodies of water which were referenced, includes seasonable brooks. Matt LeConte stated they do if they are mapped. Ernie indicated there is a seasonable brook that runs through his property and wanted to know if it applied to him. Matt stated it would apply if it is mapped. Ernie stated it goes right into the Great Works River. Matt explained that if there is a structure there already, it is exempt. Chairman Morse stated that current structures are grandfathered. Only new construction after the Town votes on this question, would apply.

Peter Dionne stated he lives on Blue Heron Lane and indicated he had a question about water marks and stated the river floods every year and asked what is considered mean high water. Chairman Morse stated that if you use the ocean as a guide, the mean tidal mark of the ocean is half way between low and high tide on a normal tide. Chairman Morse is assuming that the mean water mark on a river or pond would be an average year where the pond sits on the land. Peter indicated there is a clear river bank and when it floods, the water comes over that. Peter is referring to the Great Works River that he is specifically referencing, which is behind his home. Matt stated that if he intended to apply for a permit and there was a question as to where that particular line is, what would be required is for a wetland scientist to come out and basically update the survey denoting where they determine the mean high water mark is. He indicated it may end up being closer than specified on the map or perhaps. Marci Dionne, who also lives on Blue Heron Lane, wonders if this all came about because of a proposed development. Matt indicated this came about because a Board Member suggested that the ordinance locally be in line with the State's requirement with DEP and that is how this particular change came about. Marci referenced a proposed development on Company Woods Road and Matt indicated that was a completely separate ordinance change. Chairman Morse stated the only reason this change is being done is to follow state guidelines and get everyone on the same page.

Chairman Morse closed the public hearing at 6:43.

**Question #2: Shall an ordinance entitled “Proposed Zoning Ordinance Amendments to amend Recreational Vehicles to require a permit for use as a dwelling for more than 90 days and no more than 120 days” be enacted?**

*Add 5.2.10.d d. A Code Enforcement Officer permit shall be required to utilize a Recreational Vehicle as a dwelling and not located within an RV park for more than 90 consecutive days or more than 120 days in a calendar year. This permit shall be required for anyone who allows a recreational vehicle to be utilized as a dwelling for more than 1 consecutive week on their property. Cost of said permit shall be established by the Board of Selectmen. The property owner will be responsible to provide the Code Enforcement Officer with evidence of potable water and sewage disposal as part of the application process.*

*Intent: To require a permit for the usage of a Recreational Vehicle as a dwelling and not located within an RV park for more than 90 consecutive days or more than 120 days in a calendar year*

Chairman Morse stated all this is doing is preventing people from setting up a camper without the Town knowing what is being done with the sewerage and how they are dumping the drains and making sure it is all being done legally and getting a permit for it.

Chairman Morse opened the public hearing at 6:46 p.m.

The question was asked if somebody going to investigate whether all of this being enforced. Chairman Morse stated that it is basically the Code Officer's responsibility to monitor the time length from the time they get their permit to set their camper until they leave. They will need to show the Code Enforcement Officer where they are dumping their sewer and how they are dumping sewer, etc.. It will be the CEO's responsibility to make sure everything is done to Code. Obviously, Matt cannot drive around every day looking for campers set up so there will have to be law-abiding citizens to help with that.

Mark Rouillard asked if a port-o-potty be acceptable for sewerage. Chairman Morse stated that sewerage from the RV cannot be dumped into the port-o-potty but just to use it, that is fine. Matt asked for an example. Mark stated it would be used to go to the bathroom. Chairman Morse believed his question was if he wanted to set up an RV, and do not want to use the internal bathroom, could they use a port-o-potty instead. The answer to that is yes, for 120 days, they could. Matt stated that the goal is to have a start date and a finish date and it not to exceed 120 days and not be this time of the year and not extend beyond the 120 days. Matt indicated that 120 days is normally and customary for the summer months. The question was asked if there is a specific start date and end date. Matt stated that would be notated on the permit itself. Matt stated dates were discussed but it is 120 calendar days total. The question was asked if the permit would be posted similar to a building permit for the public to view. Matt indicated it would have to be posted in the window of their camper. The question was asked about the RV being on private property. Matt indicated that a member of the public would be considered to be

trespassing but a public official would not. If the camper is visible from a public way, the window facing the public is where the permit should be located.

**Question #3: Shall an ordinance entitled “Proposed Zoning Ordinance Amendments to enact Solar Energy Performance Standards” be enacted?**

*Add 5.2.24 Solar Energy Performance Standards*

*A. Purpose. The purpose of these provisions is to regulate a solar energy system, allow the town to be informed of the placement of a solar energy system, preserve and protect public health and safety, allow for orderly development of land, and protect property values.*

*B. Standards*

*1. A residential solar system (RSS), is allowed in all Zoning Districts and shall: a. Comply with the setback and height requirements of the zoning district in which the system is to be installed. b. Comply with the provisions of all applicable requirements of the Town's building, electrical, fire, and other health safety and technical codes. c. Be installed so as not to cause any wire or wireless communication signal disturbance. d. Be sited to prevent glare onto abutting properties, structures, and roadways. 2. Commercial Standards. A commercial solar system (CSS) and utility solar system (USS) shall: a. Comply with the requirements of Conditional Use review. b. Comply with the setback and height requirements of the zoning district in which the system is to be installed; however, the Planning Board may require additional setbacks and buffers from existing abutting residential uses to minimize impacts from the project. c. Comply with the provisions of all applicable requirements of the Town's building, electrical, fire, and other health safety and technical codes. d. Ground-mounted system. 1. Secure all ground-mounted electrical and control equipment to prevent unauthorized access. The system shall be enclosed within a minimum six (6) foot tall fence with locking gate and Knox-Box® to provide emergency access. The type of fence shall be appropriate for security, screening, and/or other purposes and shall be similar to and/or compatible with the style of fences used within one-thousand (1,000) feet of the property boundary. 2. A ground-mounted system shall comply with the standards specified in 5.2.24.1. e. Install all electrical wire and utility connections, except for transformers and controls, underground to the greatest practical extent. The Planning Board shall consider prohibitive costs and site limitations if asked to waive this standard. f. Limit exterior lighting to that required for safety and operational purposes. g. All signs shall meet the town's sign ordinance. h. Be appropriate to the surroundings and minimize environmental and visual impacts on adjoining properties, including: 1. Screening ground-mounted installations from view by abutting residential properties, using vegetation, topography, and/or fencing. 2. Using a manufactured finish appropriate to and compatible with the surroundings, with reflective characteristics that minimize negative visual impacts to the greatest practical extent. i. Shall plant native, non-invasive groundcover, which is low-maintenance, drought resistant, and non-fertilizer dependent, under and between rows of solar panels to prevent soil erosion. The Planning Board may require a performance guarantee for CSS projects. j. Be removed if it has not produced power for a period of twelve (12) consecutive months. In the event of a natural disaster, act of violence, or other event which results in the absence of electrical generation for twelve (12) months, by the end of the twelfth (12th) month of nonoperation the applicant shall demonstrate to the Town that the project shall be substantially operational and producing*

electricity within twenty-four (24) months of the event. If such demonstration is not made to the Town's satisfaction, the decommissioning shall be initiated eighteen (18) months after the event.

k. A performance guarantee approved by the Town Manager shall be provided prior to initiating construction. The performance guarantee shall provide adequate funds to cover the total cost of decommissioning. Every five (5) years after the start of construction, updated proof of the cost of decommissioning shall be submitted to the Town Manager. If the amount of the current performance guarantee is inadequate to cover the total cost of decommissioning, the applicant shall provide a new performance guarantee to the Town in an amount which is adequate to cover the total cost of decommissioning.

l. A USS shall be required to meet these additional standards:

1. Shall not be sited on active or non-active agriculture and or farmland. Solar development shall not be located on soils which are most suitable for agriculture (based on the Soil Suitability Guide or Land Use Planning In Maine). Sites of unusable land are better. (See 5.2.24.B.1.3)
2. Shall minimize impacts on active farmland including, but not limited to, fencing, use of waterways, obstructions created by placement of structures and/or overhead collection lines, division of larger fields into smaller or irregularly shaped fields, need for extensive areas of cut and fill, among other factors that create a burden or unreasonable impact on active farming activities.
3. Shall encourage siting on unproductive land and previously disturbed land to the greatest extent possible. All topsoil disturbed during construction shall be stockpiled and returned to the site.
4. Shall locate access roads and overhead collection lines along the edge of agricultural fields in areas next to field boundaries and hedgerows and in nonagricultural portions of the site. Access roads that are proposed to be constructed through agricultural fields shall be level with the adjacent field surfaces, where possible.
5. Shall demonstrate how the site shall be restored to its original state, including surface grade, soil, and vegetation, as part of removal of infrastructure and decommissioning.
6. Shall not be sited on properties where public sewer and water services can be extended and a compact pattern of residential development can feasibly be developed in conformance with the purpose of the zoning.
7. Shall minimize impacts on nearby existing residential development and/or residential zones, including, but not limited to siting, fences, buffers, and/or screens.
8. Shall locate access roads and overhead collection lines to minimize impacts on nearby existing residential development and/or residential zones.
9. Shall demonstrate that stormwater, erosion control, and landscape plans maintain water quality and minimize export of sediment, phosphorus, and other contaminants from the site in support any waterbody or wetland.
10. A soil sample must be provided on an annual basis by a licensed soil scientist for review by the Town Engineer. Soil Samples shall be taken in various locations of the property in and around the location of the solar panels and specifically tested for the discharge of heavy metals into the ground from the solar array.
11. A performance guarantee approved by the Town Manager shall be provided prior to initiating construction. The performance guarantee shall provide adequate funds to cover the total cost of the planting of native, non-invasive groundcover, which is low-maintenance, drought resistant, and non-fertilizer dependent, under and between rows of solar panels to prevent soil erosion as well as the soil testing review required in 5.2.24.B.10. This performance guarantee is in addition to the performance guarantee for the decommissioning of the site.

Article 3 - Definition: SOLAR ENERGY SYSTEM A solar collection system used to capture, convert, and supply electrical energy or thermal power, and consisting of one (1) or more freestanding, ground, roof, or wall mounted, solar arrays or modules, or solar related equipment, intended to reduce consumption of utility and/or fuel generated power.

A. RESIDENTIAL SOLAR SYSTEM (RSS) - Intended for residential uses where the power generated is utilized only for the single family residential property upon which is it



sited. B. COMMERCIAL SOLAR SYSTEM (CSS) - Intended for a multifamily dwelling, multifamily dwelling above the ground floor of a mixed use development, mobile home park, convalescent, rest, or nursing home, residential care or congregate care facility, institutional use, recreational use, commercial or industrial use, or rural use, a CSS may be up to twenty thousand (20,000) square feet in surface area with a rated nameplate capacity of up to two-hundred-fifty (250) kilowatts (kW) The Planning Board may waive the size limits for surface area and nameplate capacity if the applicant demonstrates to the Board's satisfaction that the additional surface area and/or nameplate capacity is needed to meet the energy requirements for intended onsite use. C. UTILITY SOLAR SYSTEM (USS) - Intended for off-site utility grid use, a USS is larger than twenty thousand (20,000) square feet in surface area with no limit on the rated nameplate capacity. Intent: To adopt performance standards for the siting and development of Solar Energy Systems.

Intent: To adopt performance standards for the siting and development of Solar Energy Systems.

**Question #4: Shall an ordinance entitled, "Ordinance amending the North Berwick Zoning Ordinance to expand areas in and near the Residential 1 Zone where industrial uses will not be permitted and to make conforming changes to the Zoning Map," be enacted?**

**Question #5: Shall an ordinance entitled, "An Ordinance Amending Section 6.3 and 8.3 of the Subdivision Ordinance to require the submission of a proposed subdivision plan in a format acceptable to the York County Registry of Deeds" be enacted?**

Intent: To place into ordinance the requirement that submissions for recording of plan must be in a format acceptable to the York County Registry of Deeds.

The only change to come out of the hearing was an addition to the Solar Panel standards to require soil samples on a yearly basis for commercial and utility fields to look for heavy metal leaching which was mentioned as a concern during the public hearing.

The votes were as follows for the nine sections for review of ordinance updates:

**Question #1: Shall an ordinance entitled "Proposed Zoning Ordinance Amendments to Amend Shoreland Zoning setback from 100 feet to 75 feet" be enacted?**

David Ballard motioned that the setback be set for 75 feet instead of 100 feet. Mark Cahoon seconded the motion. VOTE: 3-0

David Ballard motioned to update the table from 4.3 to 75'. Mark Cahoon seconded the motion. VOTE: 3-0

**Question #2: Shall an ordinance entitled “Proposed Zoning Ordinance Amendments to amend Recreational Vehicles to require a permit for use as a dwelling for more than 90 days and no more than 120 days” be enacted?**

David Ballard motioned to amend 5.3.10 regarding Recreational Vehicles. Jon Morse seconded the motion. VOTE: 2-1

**Question #3: Shall an ordinance entitled “Proposed Zoning Ordinance Amendments to enact Solar Energy Performance Standards” be enacted?**

David Ballard motioned to create 5.2.24 to enact Solar Energy Performance Standards as stated and made the addition regarding requiring a soil sample be provided on an annual basis by a licensed soil scientist for review by the town engineer. Mark Cahoon seconded the motion. VOTE: 3-0

David Ballard motioned to add to Definitions section and remove duplicate multi-family reference. Mark Cahoon seconded the motion. VOTE: 3-0

**Question #4: Shall an ordinance entitled, “Ordinance amending the North Berwick Zoning Ordinance to expand areas in and near the Residential 1 Zone where industrial uses will not be permitted and to make conforming changes to the Zoning Map,” be enacted?**

David Ballard motioned to amend the zoning map regarding Residential 1 and Industrial. Mark Cahoon seconded the motion. VOTE: 3-0

David Ballard motioned to amend section 8.2 Plan Formant. Mark Cahoon seconded the motion. VOTE: 3-0

David Ballard motioned to amend section 6.3 Plan Formant. Mark Cahoon seconded the motion. VOTE: 3-0

**Reminders: Next Planning Board Meeting – February 23, 2023 - 6:30 P.M.**

4. Other Business:

5. Adjournment:

Mark Cahoon motioned to adjourn the meeting at 8:00 PM. David Ballard seconded the motion. VOTE: 3-0

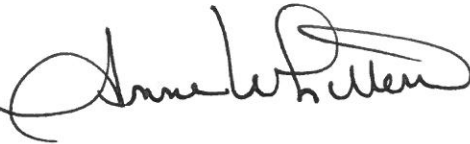
Matthew LeConte  
Planning Coordinator

Respectively submitted,  
Jennifer Berard, Stenographer

Chairman Jon Morse

A stylized, handwritten signature in dark ink, featuring a large, sweeping loop at the top and a long, horizontal stroke extending to the right.

Anne Whitten

A handwritten signature in dark ink, written in a cursive style that closely follows the printed name "Anne Whitten".

David Ballard

Scott Strynar

Mark Cahoon

A handwritten signature in dark ink, written in a cursive style that closely follows the printed name "Mark Cahoon".

Scott Carpenter

Justin Perry

A large, stylized handwritten signature in dark ink, featuring multiple overlapping loops and a long, sweeping horizontal stroke at the bottom.