



TOWN OF  
BROOKLINE, NEW HAMPSHIRE

Planning Department  
P.O. Box 360 – 1 Main Street  
Brookline, NH 03033

**Planning Board Minutes  
December 15, 2022**

**Present:** Eric Bernstein, Co-chair  
Alan Rosenberg, Co-chair  
Scott Grenier, Member  
Steve Russo, Selectboard Representative  
Eric Pauer, Alternate (virtually)  
Chris Duncan, Member

**Staff:** Michele Decoteau, Town Planner

A. Rosenberg opened the meeting at 7:00 PM and read the rules for a hybrid meeting.

A. Rosenberg read the public notice for the Public Hearing.

**C. Duncan MOVED to open the Public Hearing. S. Russo SECONDED.**

Discussion: None

Vote: All in Favor (5 – ayes, 0 - nays, 0- abstain). Motion carried.

Section 200

The proposed changes to the definitions were reviewed and Town Counsel's review was discussed. M. Decoteau reviewed that there was one deletion of a definition and the moving the remaining definitions from later in the Ordinance to the Definition Section.

Peter Webb (Mason Road) asked about creating a voter's guide. The Board graciously accepted his offer to partner on writing a guide. He thanked the Board for serving.

There was no further public comment.

**E. Bernstein MOVED to approve the proposed amendment to Section 200 on the Town Warrant for Town Meeting 2023. C. Duncan SECONDED.**

Discussion: None

Vote: All in Favor (5 – ayes, 0 - nays, 0- abstain). Motion carried.

Section 400

The proposed changes to the definitions were reviewed and Town Counsel's review was discussed. He expressed concern about the uses that required additional review. The Board had expressed concern about this at the last meeting and made it clear there were mechanisms in place for that additional review. There was no public comment.

**C. Duncan MOVED to approve the proposed amendment to Section 400 on the Town Warrant for Town Meeting 2023. E. Bernstein SECONDED.**

Discussion: None

Vote: All in Favor (5 – ayes, 0 - nays, 0- abstain). Motion carried.

### **Section 620**

M. Decoteau noted that there were few changes made. E. Pauer noted a scrivener error in the section headings. E. Pauer (alternate) noted that when the draft changed from “lot size” to “density” the change should have included “minimum lot size” being changed to “maximum density.” The Board agreed that was a good point.

### **On section 62.3**

Town Counsel said, “Not sure what 'term' is being defined here.... “

The Board reviewed and determined that there was a formatting error and this was part of #2. Once fixed, it will be clear.

### **Section 626.1**

*Town Counsel said, I just want to be clear that the 50% is relative to dwelling units having only 2 or less bedrooms. As opposed to requiring 50% of the development to be WFH while the other 50% can be Market Rate (or higher). The reason is that another town has a WFH ordinance that requires WFH projects to have a minimum of 50% of the dwelling units designated as WFH. Unless an entire project is set to be WFH such a requirement will render most, if not all, mixed projects to economically unviable. Said Ordinance is subject to several challenges and the town has already lost one fight at the NHSC. Although, the Ordinance did survive that fight the next case, which is due before Superior Court, is challenging the Ordinance on its face as being 'exclusionary.' The rationale being that the Town passed the more restrictive 50% with the intention that developers would not want to bother with any WFH projects in town because such projects would not be profitable.*

The Board discussed Town Counsel’s interpretation of this section. The Board reviewed the suggested changes and read that the changes from “dwelling” to “development” and noted that a development could be 100% work force housing. The Board discussed clarifying the intent further

Webb Scales (49 Dupaw Gould) said you have option of drawing the distinction between housing and the development. Don’t loose the concept that it is a development that contains Workforce Housing and Market Rate housing.

The Board discussed the number of bedrooms and if overall, regardless of type, half of the dwellings in the WFH development could have no more than two bedrooms – this could be a mix of WFH and mixed rate housing. Board discussed lowering the percentage of possible market rate housing but clarified it was up to 50% so a development could be all Workforce Housing. The Board and public discussed density and how density is determined in an open space development. Could something similar work in Workforce Housing so the dwellings could be more flexible in their location.

C. Duncan suggested a clarifications: Developments that qualify as WFH shall restrict 50% of the units qualifying as of workforce housing dwellings will have no more than 2 bedrooms.

### **Section 626.3**

*Town Counsel said, Not all WFH developments are large - some can simply one building or even a single home, no? I could be wrong but perhaps some language is needed to specify that WFH projects of 'x number' of units will be subject to a 10 acre requirement. Again, I may be missing something but that was my thought when I read this.*

The Town Planner and Board clarified that you wouldn't need a density bonus to add a single ADU or build a duplex.

W. Scales the driving force behind the ordinance is to drive density. If you want to build a duplex you just need a double sized lot. If you have a larger lot, you can use the ordinance to gain density.

The Board asked about lot size and density and if density was defined separately. Density is defined by lot size and frontage. W. Scale noted that we aren't using density terms in the 626.4. He suggested the language reads - how many houses per acres rather acres per house. The Board discussed how a yield plan determines density in an open space development.

The Board asked that Town Counsel review the changes and comment on "maximum density." The Board had specific edits for clarification as well as alternative texts.

**E. Bernstein MOVED to continue this portion of the Public Hearing related to the proposed changes to Section 620 to January 5, 2023, at 7:00PM. C. Duncan SECONDED.**

Discussion: None

Vote: All in Favor (5 – ayes, 0 - nays, 0 - abstain). Motion carried.

### **Section 800 Nonconforming Lots, Uses, and Structures**

#### **Section 800.01b**

Comments from Town Counsel: *I had a thought on whether there should be a mechanism to allow for a break from this rule - perhaps the use could be reestablished by a Special Exception or perhaps a Variance should be the only way.*

The Board noted that this language has not been proposed to be changed. The Board and public, including Webb Scales (ZBA Clerk), noted that there is already a mechanism for reestablishing a use. The Planning Board decided no changes were needed.

#### **Section 800.01.c2**

Comments from Town Counsel: *Maybe use the word "adverse" as opposed to "different." Using the word different can mean many things.*

The Board and public, including Webb Scales (ZBA Clerk), noted that the language already defines clear criteria for a special exception. If these criteria are met, then an applicant is entitled to proceed. The Board noted that this wording already exists and no change is being proposed. The Planning Board decided no changes were needed.

#### **Section 800.02.b**

Comments from Town Counsel: *While I do not think it is unlawful to require a variance for owners of nonconforming lots I do see several other unintended issues with this edit.*

*A variance is a case wherein someone must prove hardship and that decision is left up to appointed officials. A nonconforming lot is always and easy 'special condition' to prove the challenging 'hardship prong' of the variance criteria. However, ZBAs do make mistakes. There is always uncertainty with a variance case. As such, I could see a wave of variance requests relative to benign matters like 'garden sheds too close to a setback on a small lot.' Should any of these be denied the Town could be inundated with appeals/litigation with, potentially, undefendable decisions.*

*Having said that, I also acknowledge a need for some degree of regulation. So, my two cents, is rather than require a variance require a special exception or a waiver. That way, 'hardship' will not have to be proven making an easier application for a landowner but, at the same time, allowing for some regulation by the Town. Webb Scales (ZBA Clerk) said the ZBA always prefers a Special Exception over a Variance. A Special Exception is a slam dunk, you meet the criteria and that's it. A Variance is always a judgment call. But*

the difficulty is setting the criteria for each Special Exception. For non-conforming lot that is burdened by the Zoning, it should be easy to meet hardship.

Steve Sacherski (Building Inspector) asked if the Board had received an email from him on October 31 to make the Board aware that setbacks do not apply to lots of record. The Planning Board had not. He continued, stating there is a lot of confusion and over the years the Building Department has determined that setbacks do not apply to lots of record, that do not meet the lot size and frontage. When this has been questioned, the current and former Town Counsel, in writing, have confirmed the Building Department's interpretation is correct. So by changing this, and requiring people on a 0.1, or 0.25, or a 0.5 acre lot is not cleaning up working you are taking away grandfathered rights.

S. Sacherski said Use Permitted and Permitted Use. Permitted Use are today's uses as defined in Sections 500 and 600. Uses Permitted is a use permitted by right in Section 900. So by changing the order, the Board is taking away people's rights. Did the Board realize that? The Board said they were not aware. S. Sacherski continued stating that a variance is permission granted to a specific piece of property in a more flexible manner than allowed by definition. He cited this is from training materials for ZBA members. He continued that he received an email from a resident who had an email exchange with Michele (Decoteau, Town Planner). In this exchange, she stated that if you have a lot of record that was also nonconforming, you could still build on it, but if you needed to build in the setbacks you would need to seek a variance as a double check, not as a full stop. S. Sacherski said it was a full stop until you prove your case. S. Sacherski continued an example is a cesspool septic systems, they would need to put in septic system. If they lived on a small lot, they would have to go to the ZBA and hope they got a variance because a septic tank is a structure. Volunteers on the ZBA may not understand all the setbacks and rules of NHDES and he said he'd hate to see them deny someone a septic system. Basically if someone had a 1965 Mustang and they pulled into an inspection station and tried to plug it into an emissions machine. It wouldn't work because there are different rules for a 1965 Mustang since it doesn't have catalytic converters. Same is with small lots. They can't meet the 30 foot front setback and 15 foot side setbacks and it is unreasonable to send someone to get a variance and have to ask permission from the ZBA. He asked the Board if they knew how many lots of record there were in Brookline. The Board did not know. S. Sacherski said 220.

A. Rosenberg explained the need for the change. He said the changes were to clean up the confusion from this section of the Ordinance and in particular from the diagram. S. Sacherski said he was ok with the diagram. A. Rosenberg said that the goal was to replace the diagram with words because everyone felt the diagram was confusing. S. Sacherski said when you change "every attempt shall be made" this adds setbacks to lots of record. W. Scales said lots of record do have setbacks and if they didn't then there would be no need for the "every attempt will be made to comply with them." W. Scales continued saying setbacks are mentioned in the Ordinance nearly as far back as we have Ordinance. There aren't exceptions for nonconforming lots or lots of record. W. Scales notes that lot of record frees you from dimensional requirements on a lot of record. It may entitle you to use, but the lot of record section talks about dimension and setbacks. There is no reason they shouldn't apply. The variance process is a very clear way to deal with Ordinances that are burdensome on any given lot. On a lot of record, with setbacks if they are onerous the Variance process but with input and negotiation. The difficulty on the current Ordinance is who decides when "every attempt is made" is one of those attempts shrinking the size of the structure? The question becomes how do we ensure that owners are making every attempt to – that language is too squishy.

Ioannis Parliaros (1 Hood Road) said he has a small lot, three-quarters of an acre, how can he build a house, septic system, and well on such a small lot. W. Scales said if you can't meet the setback requirements, you come to the ZBA for a Variance. I. Parliaros said this seems like you have to ask

permission to build. W. Scales said it is asking for the Ordinances to be varied for your lot. S. Sacherski said, that is asking for permission. S. Sacherski said he has a letter from the attorney that said “however having said that, I concur that setbacks do not apply to 11 Meetinghouse Hill”. That is the small 1/3 acre lot up the hill. And as the Zoning Enforcement Officer, he interprets and enforces Zoning. They only have jurisdiction if someone doesn’t agree with him and then he passes the baton over to them to hear the case.

Tony Campano (11 Meetinghouse Hill Road) reviewed the case he presented to the ZBA earlier this year. He said that he felt he was treated badly when they were denied and the Building Inspector interpreted that they did not need a variance.

I. Parliaros (1 Hood Road) said that he is looking to build a nice house on his lot. He shared that earlier this year, the town really stood behind him when his dog Tyson was hit by a car. He wants to build here and raise a family here. He wants to know if he has to ask permission to build on his own property if he doesn’t meet the setbacks. How would you go about making this the best fit with his 3/4 acre lot. W. Scales asked if he knew the setbacks – 30 feet from the front and 15 feet from the sides – and if he could build without encroaching, he wouldn’t need relief. I. Parliaros said he also has a well and septic. T. Campano said this affected the placement of his garage as well. S. Sacherski asked if the ZBA would be determining the size of structures? T. Campano said that this will be affecting 200 other lots in town. And if they are older homes, and they may have to replace their septic systems as well. W. Scales asked about septic tanks and leach fields are structures. S. Sacherski said that they are structures.

The Board discussed the language change. This is a clarification of the process.

E. Bernstein wants to consult with Town Counsel about setbacks and lots of record. It is in everyone’s best interest that everyone be on the same page.

**C. Duncan MOVED to continue this portion of the Public Hearing related to the proposed changes to Section 800 to January 5, 2023, at 7:00PM. E. Bernstein SECONDED.**

Discussion: None

Vote: All in Favor (5 – ayes, 0 - nays, 0 - abstain). Motion carried.

### **Section 1500**

Comments from Town Counsel were in general: *My two cents is that 20 acres seems like a lot but I defer to the judgments of the Planner and the Board. However, I agree that the size requirement should be greater than 'the minimum tract size.'*

The Town Planner reviewed the past meetings where smaller tract sizes were discussed and the Board agreed to keep the size larger to keep the open space substantial.

### **1507.02**

Comments from Town Counsel: *Dwelling Units v. Buildings. Does the distinction matter? Section 1507.03 differentiates the two so maybe it should be the same in both sections.*

The Board discussed removing the language “building and...” and then discussed if this was a minor change or a major change. The Board agreed by consensus that this was a minor change.

### **1507.03**

Comments from Town Counsel: *See note above.*

#### 1507.04

Comments from Town Counsel: *Additionally, the Planning Board may advise the applicant on any proposed waivers and/or variances that that, in their determination, may be required.*

The Board noted this and said this would be their regular process if an applicant needed waivers, they could advise them of it, but generally the applicants understood this.

#### **C. Duncan MOVED to approve the proposed amendment to Section 1500 on the Town Warrant for Town Meeting 2023. E. Bernstein SECONDED.**

Discussion: None

Vote: All in Favor (5 – ayes, 0 - nays, 0- abstain). Motion carried.

#### **E. Bernstein MOVED to close the Public Hearing. C. Duncan SECONDED.**

Discussion: None

Vote: All in Favor (5 – ayes, 0 - nays, 0- abstain). Motion carried.

#### **Case Review**

**SP#2020-D: E-048:** Home Business Site Plan Review -16 Russell Hill Road on Lot E-048 (3,72 acres). The proposed Grace Retreat will be short term rental of two dome tents.

A. Rosenberg reviewed the two-step process for approval. First an application must be accepted as complete, then it can be followed by approval.

M. Decoteau reviewed the steps for acceptance: fees were paid, notice was given, application materials were provided.

#### **C. Duncan MOVED to accept case #2022-D: E-048. E. Bernstein SECONDED.**

Discussion: None

Vote: All in Favor (5 – ayes, 0 - nays, 0- abstain). Motion carried.

Gohar Azarian, applicant, explained some of the changes that were made from the original plan. She said they removed the kitchens. She said they were open to making whatever changes were needed to meet the Town's concerns.

Jason Bazemore, applicant, reviewed the reasons why they wanted to start this business. This would be a way of honoring their daughter Hannah and her love of Brookline and this area in particular. These are high end dome tents. He referred the Board to the rental agreements and noted the quiet hours, the restrictions on the number of guests, and other activities the agreement prohibits.

M. Decoteau reviewed the comments from other Board s including the Health Inspector. She was concerned about the ability of the lot to have two septic systems and two wells. J. Bazemore noted that they have a dug well on the property now that would be the well used to service the tents. The were waiting on approval from the Planning Board before moving forward with a septic design. He said they were open to help and they wanted to do it right.

E. Bernstein said he reviewed the Bed and Breakfast Ordinance, and he was struggling to see how that would apply but it does require state licensing. Could this get a Bed and Breakfast license?

E. Bernstein asked about the 14 trips. G. Azarian said she figured out the number of trips based on 100% occupancy, fully expecting that they would not reach that right away. E. Bernstein asked about check in

and check out. J. Bazemore said it was somewhat difficult to capture. Some people will check in and stay others will check in and then go explore.

S. Russo asked if kids would be allowed. G. Azarian said yes. There is a 4 person maximum. S. Russo asked about refrigeration. J. Bazemore said if a mini fridge would be allowed, then they would add that.

S. Russo asked if they had stayed in any of these types of tents themselves. J. Bazemore said yes, and they planned a trip soon out of the country to stay in a dome tent. Some of high end luxury amenities.

S. Russo asked about a buffer and if there isn't one now, did they plan to add one. J. Bazemore said this area of their property isn't visible to the neighbors. The applicants shared that this is a meadow of native wildflowers and currently there are no trees in it. They desire to make sure that this is as natural as possible.

E. Bernstein asked about the hours of operation. It is particularly difficult to describe. Check in and out is definable but guests could be outside at any time. G. Azarian said that there may be noise, but no one would be visible. E. Bernstein said the Ordinance says discernable not just visible.

The Board had no more questions and opened the hearing for questions first from abutters, then from the public.

Gail Chaddock (Old Russell Homestead) said she described her property and how many different groups it is used by including snowmobilers, walkers, dog walkers, skaters and they have always been inclusionary. She described the pond, the large fields, and the views. She noted that Hannah Bazemore had a favorite reading rock. She said what she didn't understand was how this fit under the Bed and Breakfast rules. She wanted to know where this could be done and not turn their residential neighborhood into I01A. This will make the area no longer appear residential. She noted that if we have rules for a Bed and Breakfast, why ignore them? If this is a home business, how can it be done outside the home? What happens after check in when the guests are using the hot tub and sauna – will that be visible? She said that this will change the character of the neighborhood. She also said there had been many of the neighbors expressing concern about hunting.

G. Azarian said that it is huge liability for them to allow guns in the domes. This is in the rental agreement that there are no guns. S. Russo asked if the agreement could say no hunting. The Board and public had short discussion about hunting with black powder and archery.

Ron Chaddock, an abutter, asked how large the lot was at 16 Russel Hill Road. G. Azarian said about 4 acres. R. Chaddock said he strongly opposes this proposal. He said he and his family have over 100 acres and this will invite the users of the domes to use his property.

Jane Jacobs, a neighbor, explained about “watchers” – the neighborhood watches out for each other. This proposal is opening the door to strangers at a time when people are concerned about drugs, trespassing, and more. This is opening the door to strangers. This is opening the door a crack to commercial use and ignoring our own rules.

J. Bazemore said they were open to taking down the dome tents when and if they ever move or sell the property.

Dave Young (14 Russell Hill Road) said he had several items. He supports a desire to memorialize Hannah but not this way. First, he was concerned about noise. This project would be about 200 feet from him and there is lots of potential for outside activity. While there are written rules, who would enforce them? Second, he expressed concerns about hunting. The more people who are in the area with guns the more chances there are for accidents. Third, he was unsure how this fit in the Zoning Ordinance because he wasn't sure what this is. It is like a short term rental, a Bed and Breakfast, a hotel and an Accessory Dwelling Unit. It is also similar to manufactured housing. He mentioned the concerns of the Fire Department had. He said he did not feel this would fit on Russell Hill Road and should be disapproved.

The Board and applicants discussed hunting and how violations of the rental agreement would be handled.

Gary Young (14 Russell Hill Road) expressed his sorrow over Hannah. He shared some of the places they crossed paths in the neighborhood. He said he is against this proposal. He said once something is built, it says. This would become a campground. He has noted that this year he has had deer stands taken down that are on his property. His no trespassing signs have been removed. He said that the applicants will not know what is going on with the guests.

Steve Turkington shared some of the comments made by Jane Turkington in her letter to the Board and expressed concerns about changes to the character of the neighborhood.

W. Scales said that we would like the Zoning Ordinance to express the will of the Town. He did not see how this Zoning Ordinance. We have an Ordinance for Bed and Breakfasts and this doesn't fit. But we want to permit something like this, we change the Ordinance.

S. Turkington said that Brookline has been plagued by other home businesses bending the rule and the neighbors are concerned. Businesses are serious about their business plans and less about adhering to the Home Business rules.

G. Azarian asked why were the neighbors assuming the worst? J. Bazemore said they are open to any way to make this work.

Jeff McGarry (3 Yankee Way) said the concern he had was with the structures themselves. Any time you have 4 or more guests, you need to sprinkle. And you need two means of egress.

D. Young said he is not against the business but there are no rules. He said there need to be rules.

The Board discussed how this could, yet did not fit in any category in the Zoning Ordinance. After a short discussion of the possibility of developing short-term rental guidelines and Ordinance that the Planning Board had on the list for next year, the applicants withdrew their application. They volunteered to help on any committee drafting short-term rental Ordinances in Brookline.

#### **Road Review:**

- SD#2018.1:C-4 – Countryside Drive
- SD#2013-5:D-24 – Wright Road – Bond Review

The Board review the materials that had been provided from the Town Engineer and wanted clarification on what he recommended. M. Decoteau will ask for clarification.



**Minutes from previous meetings**

The Board tabled the minutes until the next meeting.

**Review proposed changes to and schedule Public Hearings:**

The Board requested Town Counsel input on Sections 300 and 1400 in light of the changes to the State Building Code Review Board.

**E. Bernstein MOVED to adjourn the meeting at 10:18 PM. C. Duncan SECONDED.**

Discussion: None

Vote: All in Favor (5 – ayes, 0 - nays, 0- abstain). Motion carried.

Respectfully submitted by M. Decoteau

Approved on: 01.05.23