

New Durham Planning Board  
April 21, 2020  
*APPROVED 5/19/2020*

**TOWN OF NEW DURHAM  
PLANNING BOARD  
New Durham Town Hall  
April 21, 2020, 7:00p.m.  
*Final Approved 5/19/2020***

*Under the emergency provisions of RSA 91A, this meeting took place electronically via Zoom.*

*IN LIGHT OF THE COVID 19 (CORONA VIRUS) SOCIAL DISTANCING ADVICE MADE BY THE GOVERNOR AND CDC, THE TOWN OF NEW DURHAM New Hampshire FOLLOWING A DECLARATION OF EMERGENCY BY THE PLANNING BOARD CHAIRPERSON, IS PROVIDING A MEETING PARTICIPATION VIA TELEPHONE CONFERENCE FOR YOUR SAFETY.*

*This meeting is for members and the public to utilize the zoom platform to prepare for future meetings and public hearings. All members of the Planning Board and Town Administrator have the ability to communicate contemporaneously during this meeting through this platform, and the public has access to contemporaneously listen and, if necessary, participate in this meeting through dialing the following:*

*Join Zoom Meeting <https://zoom.us/j/91035004641?pwd=dmlsNERlQzhxVm5uWkRSSHNKOUDlUT09>*

*Meeting ID: 910 3500 4641 Password: 057766*

*By phone: +1 301 715 8592 US*

*Any technical difficulties contact Town Administrator Scott Kinmond @ [skinmond@newdurhamNewHampshire.us](mailto:skinmond@newdurhamNewHampshire.us) or 603-556-1516.*

**PRESENT**

Jeff Allard, Chair – via Zoom  
Bob Craycraft, Vice Chair – via Zoom  
Scott Drummey – via Zoom  
Dorothy Veisel, Board of Selectmen representative – via Zoom  
David Wessel – via Zoom  
David Bickford, alternate member– via Zoom

**ALSO PRESENT**

Scott Kinmond, Town Administrator – via Zoom  
Terry Jarvis, resident/Chair of Zoning Board of Adjustment – via Zoom  
Paul Raslavicus, resident– via Zoom

**CALL TO ORDER**

Chair Allard called the meeting to order at 7:05pm.

Chair Allard confirmed the meeting was posted appropriately with access numbers. He stated that in the event the public is unable to access the meeting, it would be adjourned and rescheduled. Chair Allard stated all motions would be taken by roll call. Chair Allard asked Planning Board members to introduce themselves and identify anyone in the room with them as well as any members of the public.

### **AGENDA REVIEW**

Mr. Drummey noted the minutes of the last meeting indicated the Spohn hearing was being continued to tonight. Chair Allard added it under New Business.

Ms. Veisel stated she has a message from the Board of Selectmen regarding the Planning Board budget.

### **PUBLIC INPUT**

None.

### **Review Update from Bruce Mayberry - Impact Fees**

Chair Allard stated an interim report was received from Bruce Mayberry, which summarizes demographics and analyses he has conducted which will help determine how impact fees can be calculated. Mr. Craycraft clarified a final impact fee report was been received, dated April 10, 2020. He stated it has the calculations for an updated fee as well as rational and alternative means for applying the impact fee. Further discussion of the final report will be postponed until all members of the board have reviewed the report. The Board discussed the report. Chair Allard pointed out some aspects which stuck out to him: it appears the average home size appears to have been reduced; the average enrollment has not changed much since 2000 although there has been a decrease in the elementary school; the preschool population is not decreasing; vacant versus seasonal units has gone from 57% in the 1980s to 31% since 2010. He noted the average age of the population is increasing and the size of families is declining. Mr. Craycraft stated Mr. Mayberry was supposed to come to a meeting to present the final report but due to the COVID-19 circumstances, that won't be happening. Mr. Bickford stated he gets the student statistics every year from the superintendent and the decline has been since 2005 of about 1.5% each year. He stated he wants to see what the impact is with the addition of a student and have that explained. Chair Allard suggested they may look at it the opposite as they already have the facilities and teachers for a higher population so perhaps impact fees should go down. Mr. Bickford stated its not based on the actual cost for an additional student but its based on the capital structure, per New Hampshire RSA 674:21V. Mr. Craycraft noted Mr. Mayberry is available to attend a virtual meeting to answer questions.

### **Possible Zoning Ordinance Changes for 2021**

Chair Allard outlined some suggestions for areas of change:

*a. A requirement for applicants to provide pre-addressed envelopes to notify abutters. Should this be an ordinance or procedural change?*

*b. Should New Durham allow detached accessory dwelling units on nonconforming properties?*

*c. Changes to the Zoning Ordinance relative to rebuilding on non-conforming properties*

Mr. Craycraft stated the pre-addressed envelopes is an administrative change, not an ordinance issue and would be appropriate in site-plan regulations. It was confirmed this change would require a public hearing but would not be on the warrant. Ms. Jarvis noted this is something that affects Zoning Board and possibly the Conservation Commission and stated the Zoning Board of Adjustment does have procedures of operations and its not clearly spelled out requiring this but they will be revisiting it. She strongly encouraged this change to be in procedures rather than ordinance due to possible changes in statute requirements. Chair Allard stated he would work with Mr. Cauler and develop draft language.

Chair Allard stated at the last meeting there was discussion and question whether they should allow detached accessory dwelling units on non-conforming properties. He stated Mr. Craycraft pointed out that the language in the ordinance clearly indicates accessory dwelling units are not allowed on non-conforming properties. He stated it seems to be an example of where the language was not appropriately crafted as indicated by the example of the request by the Spohns, which after review of the property and plans, seems reasonable. Chair Allard asked if the Board thinks a change in the ordinance is warranted at this time. Mr. Raslavicus stated the language arose from the concern about small lots and the crowding of lots; he stated this would include garages being built on lots across the street when they won't fit on the house lot. Mr. Drummey stated he doesn't see a problem as long as it doesn't make a lot more non-conforming. Ms. Jarvis suggested that if there is enough land on the lot to build a garage and get a permit for a house, why couldn't there be an accessory dwelling unit on either the house or the garage; if there simply weren't enough space without a variance, than that would be a separate issue. Chair Allard suggested that if an accessory dwelling unit is part of a garage, which conforms to all other requirements, could be allowable. Mr. Bickford noted the ordinance requires that any stand-alone accessory dwelling unit has to be on a lot with area 50% more than that required for a conforming lot. He recommended going back to the minutes and legal advice to see what they previously determined. Chair Allard stated there are bedrooms and other criteria that brings that into play. He noted there is plenty of room within the setbacks for the buildings being proposed by the Spohns and the Board knew that when the variance was granted a few years ago, as the structures fit on the lots according to the requirements. Ms. Jarvis stated she wants to be sure they don't get into any details of the case in the event it comes before the Zoning Board of Adjustment.

Chair Allard stated there have been discussions regarding building on non-conforming properties and Mr. Raslavicus has some thoughts to share with the board. He stated there are a lot of non-conforming lots in Town, with a lot of old camps being torn down and replaced with new homes. Mr. Raslavicus explained the majority of small building problems are on the lakeshore lots; there are lot of the restrictions in the ordinances and the shoreline overlay district protection and recommended that anything related to the shorefront should be contained within the shorefront ordinance to avoid duplication. He stated many small lots are not deeper than 100' and the ordinance calls for a setback of 75'. That interferes with the RSA that requires 25% of the woodland past the 75', should remain unimproved. Mr. Raslavicus noted "footprint"

only occurs once in Article XXI but refers to an ancillary structure is not mentioned anywhere else; he noted the RSA 483:B requires new construction to be moved from its original footprint and explained the definition which means something being rebuilt has to be “in kind.” He stated he has looked at other towns around Lake Winnepesaukee and they don’t allow increase in size on the building being built on the footprint. Ms. Jarvis stated the Zoning Board of Adjustment received opinions from legal counsel regarding the 50’ and 75’ marks as well as the other issues Mr. Raslavicus has brought up and will have Mr. Cauler forward this information to members of the Planning Board. Chair Allard asked Town Administrator Kinmond if the legal information prepared for the Zoning Board of Adjustment could be shared with the Planning Board. Town Administrator Kinmond replied he would check with Town Counsel to be sure.

Chair Allard stated that when out fishing on the lakes in Town, he sees so many violations of the shoreline protection. He stated there are a lot of homes and structures within 50’ of the water; they are being rebuilt and expanded. Chair Allard suggested they need to determine what really matters, whether it’s the height, width, or storm water runoff but what could the limits be under what circumstances? He stated he believes that the storm water is the most important and suggested they need to determine how accurate the calculations are and is the capability to calculate storm water runoff fairly standard? He stated Alton has a requirement that if the house is within the 50’ state buffer, rebuilding has to be in kind without going up or out. Mr. Drummey stated he agrees that storm water runoff is the most important factor in preserving the lake; he doesn’t mind a larger home as long as the lot is less nonconforming as far as runoff and septic location. He stated if trees are being cut along the shoreline, that is a violation and needs to be enforced by either the Code Enforcement Officer or the State. Ms. Veisel agreed that enforcement is the key. Mr. Raslavicus noted the Shoreline Conservation Ordinance follows the State RSA including the 50’ woodland buffer zone. He noted some language which is not in the ordinances but should be considered is in the RSA. This includes the redevelopment of existing conditions such as bringing buildings to greater conformity by reducing the square footage, storm water management, adding filtration, upgrading waste water management, improving traffic management and other improvements which provide wildlife or resource protection. Ms. Jarvis stated the Zoning Board of Adjustment has had applications which want to build a replacement house and while they want to go up and out, they also say they will take the cesspool and replace it with a septic system, dry-wells, gutters, storm water management systems, pervious pavers; she stated the Zoning Board of Adjustment looks at this and considers the request for a bigger house is balanced out with the other improvements. Mr. Raslavicus suggested putting the RSA language in the ordinance to give credit for these items. Chair Allard asked Mr. Bickford if he is familiar with the history of these particular RSAs. Mr. Bickford stated he wasn’t part of those discussions specific to building on footprints; Mr. Raslavicus stated he was told the first version did not have any information about what they have discussed tonight and it was builders who said it needed to be included. Mr. Craycraft stated they see a lot of people doing storm water management improvements but if they aren’t being maintained then they need more enforcement. Ms. Jarvis suggested to wait and see if the Zoning Board of Adjustment will allow the legal guidance to be released to the Planning Board. Mr. Bickford confirmed this is specific to shoreline protection properties not nonconforming lots; he stated they don’t want to forget those. Ms. Jarvis noted she doesn’t recall ever having an application for a nonconforming lot that was not on Merrymeeting Lake.

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Chair Allard asked the opinion of the Board regarding the continuation of the public hearing for the Spohns.

**Mr. Drummey made a motion to continue the public hearing for the Conditional Use permit of Karen and Peter Spohn, Map 114, Lot 39, 399 South Shore Road to the May 5, 2020 Planning Board meeting. Ms. Veisel seconded the motion. Roll Call: Mr. Craycraft –aye; Mr. Drummey – aye; Ms. Veisel – aye; Mr. Wessel-aye; Chair Allard – aye. Motion passed, 5-0-0.**

#### **Update from Board of Selectmen Regarding Budget**

Ms. Veisel stated that when reviewing the department and committee budgets, the Planning Board has 69% of their budget remaining within the first quarter of this year. She stated the Board of Selectmen are considering the prospect of reduced revenues coming and are looking wherever they can. It was noted the funds went to Bruce Mayberry; it was a committed bill for contract work. Chair Allard stated he would meet with Town Administrator Kinmond because the Board has two projects the Board wants to complete this year including update of impact fees and reworking of the ordinance dealing with soil types; he stated he is not sure if they signed a contract for the soil testing so will need to follow up on that. Ms. Veisel noted this is just a note of caution as the Board of Selectmen will be asking all departments and committees to conserve where they are able to.

#### **APPROVAL OF MINUTES**

Meeting of March 3, 2020 – Edits were made. **Mr. Drummey made a motion to approve the minutes as amended. Mr. Craycraft seconded the motion. Roll Call: Mr. Craycraft –aye; Mr. Drummey – aye; Ms. Veisel – abstained; Mr. Wessel-abstained; Chair Allard – aye. Motion passed, 3-0-2.**

Meeting of April 7, 2020 – Postponed.

#### **NEXT MEETING**

May 5, 2020, 7:00pm – location TBD

#### **ADJOURN**

**Mr. Drummey made a motion to adjourn. Ms. Veisel seconded the motion. Roll Call: Mr. Craycraft – aye; Mr. Drummey – aye; Ms. Veisel – aye; Mr. Wessel-aye; Chair Allard – aye. Motion passed, 5-0-0.**

The meeting was adjourned at 10:13pm.

Respectfully Submitted,