

PETERBOROUGH PLANNING BOARD
TOWN OF PETERBOROUGH
Monday, November 29, 2021 – 6:30 p.m.
Peterborough, New Hampshire

Members Present: Sarah Steinberg Heller, Lisa Stone, Josh Blair, Andrew Dunbar, Blair Weiss, Ivy Vann and Stephanie Hurley

Also Present: Laura Norton and Danica Melone, Office of Planning & Building

Vice Chair Vann called the workshop to order at 6:30 p.m. with a welcome and introductions. She noted that the purpose of the meeting was to review and discuss suggested proposals to the code to get a sense of the Board as to what they will be going forward with formal public hearings for the Ballot in May of 2022.

Definitions:

Ms. Melone began with Chapter 245-4 Definitions and a discussion on Dwelling or Dwelling Unit and the proposal to remove *overnight cabin* from the definition. She noted overnight cabins were not a permanent residence (without adequate air, sleeping, sanitation and cooking facilities) as well as replacing the term *mobile homes* with *manufactured homes or housing* (as it is under the umbrella of this term and has a definition). “These clarify the definitions” she said.

When a question about the difference between manufactured homes and on-site manufactured homes came up a brief discussion about the umbrella of the term manufactured housing followed with Code Officer Tim Herlihy noting mobile homes or trailers (“or whatever they have historically been called”) are now defined as manufactured housing.

Front Building Setback: Ms. Melone noted several lots in town that share two frontages along a right-of-way, not just one so the proposed change in the definition makes sure these lots (with two or even more front building setbacks) are accommodated. “The current definition does not take this into account” she said. It was established that a building may have frontage on more than one right-of-way and the town was requiring the frontage requirement be observed on all fronts. A brief discussion about the language and the use of the word “adjacent” versus the suggestion of “parallel” followed with Ms. Vann noting she would do some further research and see what other jurisdictions have done. She also noted it was important to address the subject “because I am not sure if that is what we want

to do because if you have a lot that has roads on three sides, I don't think we want to require all three sides to have the frontage setbacks as they are frequently very different from the side and rear setbacks." Mr. Herlihy noted another issue that has come up is *back lots* (via access easements) that do not border an actual roadway and noted a specific example where he had to make a determination that the lot had three side setbacks and one rear setback." Mr. Herlihy concluded that other communities have determined the building frontage setback is determined by the road or street the house faces. "But either way it is vague and difficult to work with" he said. From the audience Joanne Carr suggested considering the incorporation of frontage into the definition to say the front property (or frontage) shall be accessed along that line that is adjacent to the right-of-way. That will define one single frontage." Ms. Vann replied, "that is a really good idea I'll make a note and we'll revisit that."

Dwelling Size: Ms. Melone noted the proposal to eliminate the minimum size throughout as there is no need to have it and it is a hinderance to building smaller dwellings. It was also noted the International Building Code (IBC) and International residential Code (IRC) determine health and safety requirements. A brief discussion of the minimum dwelling size of 350 square feet followed with the determination that the number does not exist in the zoning regulations.

Floodplain: Ms. Melone noted the proposal was to make the language match the state statute by striking *mobile home* and replacing it with *manufactured homes* being prohibited in the floodway.

Groundwater Protection Overlay Zone: Ms. Melone noted the proposal is to add an authority clause that is a statutory requirement. "Every ordinance that is adopted should have the authority clause at the very beginning" she said adding "it gives you the power to enact and use the ordinance but more importantly is that this ordinance uses Conditional Use Permits which is the innovative land use controls, so we really need to have that cited the authority." (RSA 624-21).

Accessory Dwelling Units (ADUs): Ms. Vann told the members, "this is the revised sizes of ADUs." Ms. Melone noted at their last meeting they talked about removing the minimum and maximum sizes of ADUs "but thinking about this further it did not make sense to me to say there is no maximum size for a detached ADU, because at that point you are building a second single family home on the same lot." Ms. Melone noted further discussion was needed "but for now I would like to put a 1000-square foot maximum size on ADUs." Ms. Vann interjected the suggestion that the maximum size be 1000 square feet or one-third of the parent building, "whichever is larger." "That is reasonable" replied Ms. Melone adding

“in talking about this, it seems ADUs are the best way to acquire a second dwelling unit of a lot and you say there is no maximum size limit then you should just encourage a duplex, which actually reduces the regulations associated with an ADU (doesn’t have to be the primary residence, doesn’t have to be owner-occupied). She concluded “if we are proposing large ADUs we should really be encouraging duplexes.” Ms. Vann agreed and asked, “if there was minimum and no maximum size for the ADU, why do we need the ADU ordinance?” A brief discussion about dimensional requirements followed with Ms. Vann again suggesting they propose that no new detached ADU shall be larger than 1000 square feet or one-third of the parent building, whichever is larger. Another discussion about the maximum square footage followed and citing her feeling the town has been frozen for years with zoning issues Ms. Heller advocated no limitation to the size of the ADU. “Why don’t we try it and see what happens?” she asked. Ms. Melone interjected that without a limit “we would be allowing two single-family homes on the same lot which is not allowed by the RSAs.” Mr. Herlihy noted that not every lot in town “should have, could have or would have two separate houses on the same lot.” He noted actual space constraints, the need for additional septic and well systems if not on town utilities, dimensional and access parking requirements. “For the bigger lots it may not be a problem but in the downtown, you are going to have issues.” As the discussion proceeded Ms. Hurley interjected “point of order” followed by her telling Ms. Vann she did not like her tone of voice. “I am really very turned off by it, it’s like you are yelling at people, why can’t you just talk to him? I don’t think it is a very nice the way you are discussing this so let’s just listen to the professionals.”

Mr. Herlihy asked the members to think about a single-family home and a lot of land with two homes on it. “What are we trying to achieve? What are we trying to control? It is a town-wide discussion.” Ms. Vann noted the controls already in place (lot coverage, setbacks, parking, septic and water) and noted “I just don’t think it is the end of the world if we don’t have an upper limit on ADUs but if we do, my preference is the 1000-square feet or one-third of the principal building, whichever is bigger.” Ms. Carr suggested they go back and review the enabling legislation for ADUs that sets out guidelines for municipalities. She noted ADUs would be allowed by Special Exception if they are not in the code “so you should make your language consistent with the statute.” Ms. Vann replied “OK, so what do we want to do? Change it to 1000-square feet or one-third the size of the principal dwelling or just a maximum of 1000 square feet? Mr. Blair noted a bit of pickle if you had a lot out of the Family District “you couldn’t do a duplex.” “But you could do an ADU” replied Ms. Vann. From the audience Carol Nelson asked if

an ADU for a duplex in the West Peterborough District was permitted with Ms. Vann replying, “no because the definition says that it has to be a single-family home.”

To get back to the sense of the Board for ADUs Ms. Vann again asked if they should recommend ADUs shall be no larger than 1000-square feet or one-third of the principal dwelling whatever is larger. (Reminding the members they cannot require an ADU be smaller than 750 square feet). From the audience Loretta Laurenitis asked about the protocol for taking a vote with Ms. Heller replying, “we are not taking a vote, we’re just taking a temperature.” Ms. Vann added “it is just a sense of the Board” after a brief deliberation the members agreed to recommend the ADU shall not be larger than 1000 square feet period.

245-26 Open Space Residential Development – Water and Sewer Systems: Ms. Melone noted this was a proposal from Ms. Hurley that if lots are smaller than $\frac{3}{4}$ acres in size that they be connected to community septic and community water when municipal utilities are not available. When asked Ms. Stone got clarification that a $\frac{1}{4}$ acre lot with septic was considered safe when using alternative open space and cluster developments (where a traditional single lot subdivision would require a minimum of $\frac{1}{2}$ acre). Mr. Blair asked what the proposed change was with Ms. Vann replying, “right now we don’t required community well and septic” “adding “and another issue is that community wells are much more complicated to manage.” She concluded by noting she did not see any reason to make this a requirement.” Ms. Hurley responded by noting she thought it was a good proposal because the ordinance (now) says you cannot have less than $\frac{3}{4}$ acre lots and this is my attempt to make it possible to have the $\frac{1}{4}$ acre lots in the district. Ms. Van noted that would have to be addressed in the lot size section of the zoning. Ms. Heller interjected “that is where the rub is here, we have to fix the actual place” adding “but I totally appreciate the idea and I think it should be part of our goals.”

Ms. Hurley noted a current case where a development has less than $\frac{3}{4}$ acre lots in the Rural Zone “and I think that puts us in a situation where this could help.” Ms. Heller explained that the Board cannot enforce this on any project already in the process. “They are grandfathered, it can’t happen again because of the petition article on the warrant last year to the Open Space Residential Development Ordinance. Ms. Vann qualified the word “grandfathered” to “vested” for clarification and that (now) there was no mechanism to approve a lot smaller the $\frac{3}{4}$ acres in the Rural District. The sense of the Board was not to pursue this proposal.

245-34 - Manufactured Home Permanent Foundation Requirement

Ms. Vann noted the proposal was to strike the foundation requirement. She then asked for and got clarification on the foundation/slab requirements with Mr. Herlihy explaining four-foot, frost-protected slab installation per state requirements. He also clarified that manufactured housing not on a permanent foundation was allowed for temporary housing for a specific amount of time while building a dwelling on a lot.

Ms. Stone suggested that if they were pulling minimum square footage out of the zoning regulations, they should do the same with this ordinance as it lists 320 square feet as a minimum size dwelling. The members agreed that if they went with a “HUD approved manufactured house” citing a minimum square footage would not be necessary. Mr. Herlihy cautioned that they word that language carefully and a brief discussion about the International Building Code and HUD standards followed. Ms. Heller suggested leaving the minimum square footage out was a beginning to repair what has been a very elitist clauses (“we shall not have in Peterborough...”) that are embedded in the zoning language. She reiterated the need not to micro-manage state and federal laws regarding criteria (adequate air, cooking, sleeping and sanitation facilities) for dwellings. A brief discussion on the difference between modular, manufactured, mobile (with or without wheels) and stick houses followed concluding with the sense of the Board to strike the permanent foundation and minimum square footage language of this ordinance.

Before moving on Ms. Laurenitis asked where tiny house would fit into the mix, Ms. Vann noted that having removed the minimum square footage from the definition of a dwelling unit, “you could put a tiny house anywhere as long as it is attached to water and sewer of some kind. When Mr. Blair asked about the foundation requirement Ms. Vann reiterated the frost-protected slab would be sufficient. Mr. Herlihy added “the minimum for HUD is 400-square feet so I think this is a moot point.” Ms. Vann briefly reviewed the fact that a tiny house would have to be actually *built* (not be a manufactured home) to qualify as a dwelling smaller than what HUD allows. In closing the discussion Ms. Melone asked for confirmation that the sense of the Board was to remove all references to minimum square-foot housing in this chapter. Ms. Vann replied “yes, just do a search and destroy on that.” Ms. Stone gave a brief clarification of what mobile homes used to be. “They were mobile they arrived on wheels and were placed in a mobile home park with a skirt around the wheels for aesthetics” she said adding “and if you broke the park rules you would have the tow man come and bring your house somewhere else.” Ms. Stone went on to say “but now they come on wheels, get lifted up and the wheels are removed, or they just come a flatbed and get pushed off. Either way they don’t stay on their wheel anymore, so they are really not

mobile homes.” “Right” replied Ms. Vann adding “it is like trying to move a house at that point.” Ms. Laurentis reiterated the confusion with all the different terms (modular homes, tiny homes etc.) that have been discussed and noted they should be defined. Ms. Vann noted there were industry standards for what they are with Ms. Melone adding “they are all defined in the building code.” Ms. Heller suggested they put a note online that directs people with questions to the IBC and Ms. Nelson asked for any kind of a “cheat sheet of terms for lay people.”

Ms. Vann went on to get the sense of the Board to propose striking the permanent foundation and minimum size square footage from this ordinance, which they agreed to.

Amendments to Chapter 207 Building Code and Chapter 224 Manufactured Housing Parks and Recommendation to the Selectboard on the Community Revitalization Tax Relief Incentive (RSA 79-E):

Chapter 207 - Building Construction: The members agreed to recommend the removal of the minimum square footage by striking part “D” Dwelling Unit Area minimum of 320 square feet. Ms. Vann noted “I am assuming we are in violent agreement of that by now.” Ms. Stone asked if that were stricken, “would it say something like the text read the expectation is that dwelling units meet all the International Building Code safety requirements and we just have no dwelling area at all in our code?” “Yes” replied Ms. Vann adding “we don’t need any of it.”

Chapter 224 – Manufactured Housing Parks: Noting all the previous discussion Ms. Vann asked if the members were in agreement to remove area size and reiterate the requirement for connecting to a public or private water and sewer system. They were, and the sense of the Board was to recommend the Selectboard make the change. Before moving on Ms. Laurentis noted the ordinance did not allow for tandem parking asked about tandem parking with Ms. Vann agreeing “it is probably worth changing to say a minimum of two parking spaces shall be provided for each manufactured housing lot and that they may be tandem.” Mr. Blair asked if there were other areas that qualification may be needed with Ms. Vann replying, “all of our parking is problematic, but I am actually not prepared to die on that hill this year” adding “parking requirements are one of the major holdups particularly for redevelopment of housing and we *do* need to take it on but not this year.”

RSA 79-E Community Revitalization Tax Relief Incentive:

This tax relief program seeks to encourage investment in town centers and to rehabilitate under-utilized buildings within those areas. In return, the governing body may provide tax relief at a pre-rehabilitation value for a finite period.

Ms. Melone gave the audience a thumbnail sketch of what the tax rebate incentive is about noting it has been extremely underutilized and the proposal is to expand the incentive of enhancing the cultural and historic features of an area from only the Downtown Commercial and Village Commercial Districts to all the districts in town. “This could encourage more preservation of historic structures and increase housing” she said. Ms. Laurenitis asked if this proposal would interfere in any way with the current TIF Districts with Ms. Melone replying “no” with Ms. Vann adding “and even if it is extended to all districts. I don’t imagine seeing a floodgate of projects.” The members reviewed the criteria for clarification to qualification that included enhancement of the district vitality; enhancement or improvement of culturally or historically important structures; promote development of the district and increase housing (with a bonus for affordable housing). Ms. Melone explained that the incentive was largely for preservation of historic structures noting “the Granite Block would be a really great example.” Ms. Carr agreed with the proposal in general but noted “I would like to see a tax impact analysis of the potential.”

Ms. Melone also cited the Economic Revitalization Zones (ERZs, RSA 162-N) of which Peterborough has two (North and South corridors) that provides businesses tax credit incentives for the provision of new employment opportunities.

Warrant Article Suggestions from Stephanie Hurley:

The members went on to review other suggestions from Ms. Hurley that had not been previously covered which included several items that were acknowledged as being important for another night’s conversation.

Suggestions they did talk about included:

*An Article to use tax-deeded land for affordable housing organizations. Ms. Melone noted that most of the time the land involved is unbuildable (its size, constrained by wetlands or steep slope) and that profitable land is used as a bargaining/swapping chip to negotiate land transactions for other land use projects, one of them being a land swap with the Harris Center for a larger bigger lot for the proposed municipal facility on Elm Street. Ms. Vann added that she thought if the proposal for housing was favored by the Selectboard “it would have to be on a case-by-case basis with a vote by the town. “They can’t just do it” she said.

*Work on a proposal to increase the density 10-20% if a project is designated as workforce or affordable housing. Ms. Melone clarified the Workforce Housing Ordinance for the members. Ms. Hurley noted that in several developments that have come up the Board has not had the authority to ask for affordable housing as a part of the density bonus. "That is what I understood anyway" she said. Ms. Vann explained that the developments came in under TNOZ I "and you are right, we cannot but if they come in under Workforce Housing ordinance, that has workforce bonuses built into it but we cannot *require* a developer to use that ordinance. Ms. Vann then briefly explained the difference between TNOZ I (an overlay district) and Workforce Housing (an ordinance) and that a developer would have to had to choose one or the other and could not use both. Ms. Hurley then asked about incorporating affordable housing bonuses into the Open Space Residential Development (OSRD) ordinance. Ms. Vann noted that affordable housing projects are only allowed in zones that allow multi-family so most OSRDs end up in the Rural District where multi-family dwelling are not allowed so it is really kind of a moot point." She concluded by suggesting they deal with density issues but not until the Housing Chapter of the Master Plan has been updated.

Ms. Laurenitis suggested they review the Workforce Housing Ordinance (last updated in 2019) and noted a conflict in its applicability section where it says workforce housing is allowed in all districts that allow residential uses but goes on to say it may only be applied where multi-family uses are allowed. Ms. Vann suggested "again another issue to be reviewed after the Housing Chapter update."

Ms. Heller noted that for her, taking on the manufactured housing and ADUs changes was enough. "I am not willing to take on getting into the other stuff, I have said that all along, Even taking on the manufactured housing and ADUs is a stretch, but we've heard from people over and over again that they want us to address them" she said adding "I would strongly caution us about taking on anything else." Ms. Heller went on to note "we need to stop hacking up our zoning, we need a full rewrite." Ms. Heller noted the Master Plan Steering Committee was just completing updates to the Vision Statement and Land Use Chapters of the Master Plan and getting ready to address the Housing Chapter of Master Plan. She told the members Joanne Carr has joined the Master Plan Steering Committee and would be a great asset, "but I think we are getting dangerously close to biting off more than we can chew." Ms. Heller noted she has been on the Planning Board and Master Plan Steering Committee for quite some time "and I just feel like it is important for me to say that I have never made a decision that has been either arbitrary or egregious and I have never worked with anyone who has."

In addressing Ms. Hurley's list of suggestions, she noted it was frustrating and that decision are not made lightly or with attitude and "even when the conversation gets tough along the way. This is a passionate Board as many are, and I'd never go into a town issue with an attitude founded or grounded in an arbitrary or capricious manner and I feel that is important to put that into the minutes" she said.

Ms. Vann briefly addressed the other items on Ms. Hurley's list which included *rentals* (a Selectboard item); *setbacks* (again, a part of a larger conversation); *Planning Board Procedures* (again, that is a big conversation) but Ms. Vann noted the way the system is set up is to be able to have a conversation with people proposing large projects *before* they are vested in it, *before* a bunch of money has been spend on laying out lot lines, drawing in roads and laying out wells and septic systems" because once that money is spent their interest in accommodating our desires is gone."

Moving on Ms. Vann noted *parking* had been discussed; use of *TIF Funds* would most likely be a Selectboard project (Ms. Melone briefly explained the public outreach process to create an amended TIF Plan and then adoption at Town Meeting); *three-family conversions* and "again that is a bigger conversation that I don't think we want to take it on this year" said Ms. Vann. The last item was suggestions of *provisions for granting Conditional Use Permits and Waivers* with Ms. Vann concluding "another much bigger conversation, I think we should hold those thoughts."

From the audience Sharon Monahan thanked the Board for a positive and productive workshop.

Ms. Heller encouraged all in attendance to use their own personal email lists and email groups to promote engagement in the public meetings and event for the Housing Chapter of the Master Plan.

Lastly Ms. Nelson suggested they change the reference to the "Board of Selectmen to the Selectmen. "That change was made years ago" she concluded.

Before adjourning Ms. Nelson asked about the taped version of public meetings (they are currently sent out via a You Tube link but are not archived). Ms. Melone asked how the Board felt about it and the consensus was positive. "We can do that" said Ms. Melone adding "we'll just have to create a retention policy."

The workshop adjourned at 8:15 p.m.

Respectfully submitted,

Laura Norton

Office of Planning & Building