



Town of Hopkinton

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HOPKINTON PLANNING BOARD MINUTES DECEMBER 9, 2014

Chairman Bruce Ellsworth opened the Hopkinton Planning Board meeting of Tuesday, December 9, 2014, beginning at 7:00 PM in the Hopkinton Town Hall. Members present: Celeste Hemingson, Michael Wilkey and Alternates Richard Steele, Clarke Kidder and James Fredyma. Members absent: Vice Chairman Timothy Britain, Ex-Officio George Langwasser, Cettie Connolly and Jane Bradstreet. Staff present: Planning Director Karen Robertson.

Due to the absence of regular members, Mr. Steele, Mr. Fredyma and Mr. Kidder were designated as voting members.

I. **Review and adopt the Minutes of October 14 and Minutes and Notice of Decision of November 18, 2014.**

Clarke Kidder, seconded by Michael Wilkey, moved to **APPROVE** the Minutes of October 14, 2014 with a correction to the meeting date shown on pages two and three, and the time the meeting adjourned shown on page three. Motion carried unanimously.

Celeste Hemingson, seconded by Michael Wilkey, moved to **APPROVE** the Minutes of November 18, 2014 with a correction on page four, second paragraph, changing "Vice Chairman Ellsworth" to "Vice Chairman Britain" and on page nine, fourth paragraph, adding language to clarify that the motion was to recommend the adoption of "2.1.S.3 Self-Service Storage Facility" only. Motion carried unanimously.

Celeste Hemingson, seconded by Clarke Kidder, moved to **APPROVE** the Notice of Decision of November 18, 2014 with a correction on page two, letter (d), adding language to clarify that the motion was to recommend the adoption of "2.1.S.3 Self-Service Storage Facility" only. Motion carried unanimously.

II. **Conceptual Consultations.** There were no conceptual consultations.

III. **Public Hearing – Zoning Amendments for 2015 Annual Town Meeting.** Pursuant to NH RSA 675:3, Chairman Ellsworth opened the public hearing on proposed amendments to the Hopkinton Zoning Ordinance. A full-text of proposed amendments is attached and is available at Town Hall, Town Clerk's Office and Town's website.

Chairman Ellsworth noted for the record that Mr. Fredyma will recuse himself when there is discussion concerning "restaurants".

Chairman Ellsworth provided a brief update of the Board's review of the proposed amendments to date, noting that the Planning Board held their first public hearing on November 18th at which time the Board recommended that a number of amendments move forward for the 2015 Annual Town Meeting. The proposed amendments publicly noticed for this evening had been revised at the November 18th meeting, requiring a second public hearing.

Mrs. Hemingson advised that Vice Chairman Britain and Mrs. Bradstreet had recently developed new language with respect to “restaurant”, outlined in the full-text as 2.1.R.4 Restaurant.

In reviewing 2.1.R.4.1 Restaurant, Drive-In and 2.1.R.4.2 Restaurant, Fast-Food, Mrs. Hemingson questioned the differences in the two definitions. In response, while many members were unsure of the differences some assumed that a “Drive-In Restaurant” would be similar to an “A & W” where food is brought out to the patron’s vehicle and eaten on premises. Members briefly discussed the various types of restaurants in Contoocook Village, suggesting whether they would be considered “Fast-Food, “Full-Service” or “Take-Out”. Discussion then focused on whether the words, “Drive-In” were intended to mean “Drive-Thru” and whether a McDonalds or Dunkin Donuts with indoor seating and a drive-thru is intended to be a use permitted.

Mr. Fredyma questioned whether the same First Amendment (U.S. Constitution) rights concerning “Adult Uses” would apply to “Fast-Food Restaurants”. The proposed amendment defines “Fast-Food Restaurants”; however, the use is prohibited in all zoning districts. In response, Mrs. Hemingson explained that the First Amendment involves “free-speech” in which some individuals have argued that their ability to sell adult magazines and videos is considered “free speech”. The First Amendment is unrelated to one’s ability to open a restaurant. The decision to allow the various types of restaurants in Town is a decision made by the residents when developing the Zoning Ordinance.

At this point, Mrs. Hemingson suggested that there is too much uncertainty concerning the definitions of the various types of “restaurants” and that it would be too premature for the Planning Board to move forward with the amendment.

Chairman Ellsworth asked the only member of the public, Richard Simms, if he had any comments or questions.

Mr. Simms stated that based on Chairman Ellsworth’s earlier statement that Mr. Fredyma would recuse himself from any discussions involving “restaurants” he was unclear as to whether Mr. Fredyma had done so as he is still participating in discussions concerning the proposed amendment. In response, Chairman Ellsworth explained that while Mr. Fredyma had recused himself he is a member of the public that can offer comments.

Mr. Fredyma noted that he did not believe that he needed to recuse himself from discussions concerning “restaurants”, but rather would recuse himself from discussions concerning “entertainment”.

Following brief discussion, Chairman Ellsworth declared that Mr. Fredyma is recused from any discussions concerning proposed amendments involving “restaurants” and/or “entertainment”.

At this time, Chairman Ellsworth asked if members of the Board were interested in moving forward in further amending the definitions of the various types of “restaurants”.

With the Planning Board believing that the definitions for the various types of “restaurants” may not be clearly defined, the Planning Board unanimously agreed to not consider the following amendments for the 2015 Annual Town Meeting.

- Amend Section II Definitions inserting new definition 2.1.R.4 Restaurant.

- Amend Table of Uses 3.6.F.5 Restaurant inserting the words, “Full-Service” so that it will read as follows, 3.6.F.5 Restaurant, Full-Service.
- Amend Table of Uses 3.6 inserting 3.6.F.7 Restaurant, Fast Food as a use prohibited in all zoning districts.
- Amend Table of Uses 3.6 inserting 3.6.F.8 Restaurant, Take-Out as a use prohibited in all residential districts and permitted by Special Exception in all commercial and industrial districts.

At this time, Mr. Fredyma recused himself from discussions concerning “entertainment” and “place of entertainment”.

The Planning Board then considered whether to amend Section II Definitions inserting new definitions 2.1.E.1 Entertainment, 2.1.L.14 Lounge and 2.1.P.2 Place of Entertainment.

Mr. Wilkey noted that the reason for the amendment is that there currently is no guidance for those that wish to provide entertainment.

Mr. Kidder suggested grammatical revisions to the proposed definition of “entertainment”. He also expressed concern that the definition may be too restrictive so that it limits the ability to provide radio music or to have a television.

In reviewing the definition of “entertainment”, Mr. Steele suggested that the last sentence which states, “Nothing in this definition shall be constructed to permit the exposure of specific anatomical areas or the conduct of adult entertainment of any kind as referenced in Section 3.9 of this Ordinance”, should be omitted and referenced elsewhere in the Ordinance. In response, Chairman Ellsworth advised that the sentence is only intended to direct a reader to the “Adult Use” section of the Ordinance.

Chairman Ellsworth asked the only members of the public, Richard Simms and Jim Fredyma, if they had any comments or questions.

Mr. Fredyma asked the Board to address one’s ability to have radio music and televisions at their place of establishment, without having to apply for a Special Exception. He was troubled by what he believed to be every type of entertainment requiring a Special Exception. Mr. Fredyma further suggested that the Board revise the language to allow one to three entertainers at establishments without having to apply for a Special Exception.

Mr. Simms expressed many concerns with the most recent article written in the Concord Monitor about the Everyday Café and its operating procedures. He suggested that the Town have perimeters in place under which businesses must operate and enforce those rules.

At this time, Mr. Kidder recommended a grammatical change to the proposed definition of “entertainment” and language exempting the use of televisions, radios and recorded music from the definition. The Board unanimously agreed.

Mrs. Hemingson, seconded by Mr. Kidder, moved to recommend the ADOPTION of the following amendments as written for the 2015 Annual Town Meeting. Motion PASSED (Vote 5-0-1).

- a) Amend Section II Definitions deleting definition 2.1.T.2 Travel Trailer and inserting new definition 2.1.R.2 Residential Tenting/Recreational Camping Vehicles. Amendment will require changing the numerical sequence of remaining definitions.
- b) Amend Table of Uses 3.6.H.4 deleting all references to “travel trailer” and inserting in its place the words, “Residential Tenting and Recreational Camping Vehicles of a Visitor”.
- c) Amend 10.4 Residential Tenting/Recreational Camping Vehicles, 10.4.1 Limitations deleting reference to “four weeks per year” and inserting in its place “sixty (60) days per year” so that the language is consistent with the time frame already established in Table of Uses 3.6.H.4.
- d) Amend Section II Definitions inserting new definitions 2.1.L.14 Lounge. Amendment will require changing the numerical sequence of remaining definitions.
- e) Amend Table of Uses 3.6 inserting 3.6.F.7 Lounge as a use prohibited in all residential districts and permitted by Special Exception in all commercial and industrial districts. *Note: The Planning Board's decision to not insert Restaurant, Fast Food and Restaurant, Take-Out and to amend and re-post the proposed amendment concerning Place of Entertainment changed (non-substantive) the numerical sequence in which Lounge is to be inserted in the Table of Uses.*
- f) Amend Table of Uses 3.6 inserting cross-references for uses in which there are other relevant provisions of the Ordinance. Cross-reference Section IX Manufactured Housing with 3.6.A.6 Manufactured Housing Subdivision, Section XVI Affording Housing Innovative Land Use Control with 3.6.A.9 Affordable Housing Option, Section X Recreational Camping Parks/Residential Tenting and Recreational Camping Vehicles with 3.6.H.4 Residential Tenting and Recreational Camping Vehicles of a Visitor, and Section XII Wetlands Conservation District (Overlay) with 3.6.H.9 Filling of Water or Wet Area.

The Planning Board then considered whether to amend 3.9 Use, Adult inserting other uses and locations in which an adult use shall be a minimum of 1,000 feet from property lines. Board members recommended clarifying the words “place of religious worship” so that it is clear that the intended reference is for a “public place of worship”. The proposed amendment will be **RE-POSTED** replacing the original proposed words, “place of religious worship” with new words “public place of worship”.

Following review of the proposed amendments, Mrs. Hemingson, seconded by Mr. Kidder, moved to **CONTINUE** the **PUBLIC HEARING** to January 13, 2015 at 7:30 PM in the Town Hall.

IV. Adjournment.

Chairman Ellsworth declared the meeting **ADJOURNED** at 9:00 PM. The next regular scheduled meeting of the Hopkinton Planning Board is at 7:00 PM on Tuesday, January 13, 2015, at the Hopkinton Town Hall.

Karen L. Robertson
Planning Director