

UNAPPROVED MINUTES

Town of Auburn Planning Board PUBLIC HEARING 2ND ZONING ORDINANCE MEETING January 21, 2014

Present: Ron Poltak, Chairman, Alan Côté, Vice-Chairman, Paula Marzloff and Karen Woods, Members. Russell Sullivan, Selectmen's Representative. Minutes recorded by Denise Royce.

Absent: Jim Tillery and Steve Grillo, Alternates.

Mr. Poltak called the meeting to order at 7:03 p.m.

PUBLIC HEARING

Mr. Poltak stated that this Public Hearing was the second Public Hearing associated with zoning amendments proposed for consideration at town meeting in March 2014. Mr. Poltak indicated that there were 14 zoning amendments and noted that everyone present at tonight's hearing were present due to only one proposed amendment which the Board will take up first. At this time, Mr. Poltak began the discussion for Amendment No. 12.

Amend Auburn Zoning Map

This is the Tenn Property

Amend the current zoning of portions of the property boundaries of Tax Map 9, Lot 28-1 which fall within the Industrial Zone and reclassify to Residential One Zoning District. The current description of the Industrial Zone reads:

"Beginning at a point on the Auburn-Hooksett town line, said point being located a distance of 3,000 feet south of the point where the south side of Hooksett Road crosses the Hooksett town line; then running in an easterly direction along a line perpendicular to the Hooksett town line for a distance of 2000 feet, then running southerly along a line parallel to and at a distance of 2000 feet, from the Hooksett town line to the northerly side of Rockingham Road to the Manchester city line; then running northerly along said Rockingham Road and Hooksett town lines to the point of beginning"

This amendment would modify the current zoning description of the Industrial zone to read:

"Beginning at a point on the Auburn/Hooksett Town line which intersects with the boundary line of Auburn Tax Map 9 Lot 28-1 and Map 6 Lot 18-6, then following the boundary line between Map 9 Lot 28-1, Map 6 Lot 18-6 and Map 6 Lot 18-7 for a distance of 2199.40 feet, then heading southerly with a line running parallel 2000' from the Hooksett town line to the northerly side of Rockingham Road to the Manchester city line, then running northerly alongside Rockingham Road to the Hooksett town line to the point of beginning."

Mr. Poltak asked Mr. Tenn and Attorney Lazos to explain what they are most concerned about regarding this proposed amendment. Mr. Tenn began by saying that this was a total surprise to them. Mr. Tenn informed the Board members that about 10 plus days ago he understood that there was a request to rezone the property and found out that he had already missed a public hearing. He was disappointed that he missed the hearing and was disappointed that they did not receive any notice regarding this proposed amendment. Mr. Tenn did not believe it was necessary to move in this direction as the property has 200 acres and is industrially zoned for the majority of it and the rest is zoned Residential One which happened in 1986 where there was no notice again at that time. Mr. Tenn stated that he did not think that any action should be taken at this time and if the Board had concerns they would be happy to have a meeting to discuss what those concerns were. Mr. Tenn would like to work and cooperate with the Board and that bringing lawyers into meetings is expensive to the town as well as for them. Their focus has been to try and work forward and implement the site plan approval. Mr. Tenn also pointed out that Attorney Lazos was present as well.

Mr. Poltak explained the reasoning on rezoning the property. Mr. Poltak began by saying, respectful of the court's proceedings and court's findings effectively from their perspective the property is residential in terms of its future use and as a result it would seem it would make more sense as the court says it is residential. Relative to what Mr. Tenn has stated that he proposes to do with the property it would make more sense to rezone the property to Residential. There is no reason to expect from the history of this property that the potential for moving it from Industrial to Residential One would be offensive to Mr. Tenn given the position he has had over time. In order to be able to do what is intended here relative to what the amendment spells out the Board would have to go through the process with him respectful of why it is unacceptable as the Board thought they were in fact doing Mr. Tenn a favor that he would embrace. The Board would like to think that there was a potential for working this through. Mr. Poltak reminded Mr. Tenn that they were in a Public Hearing and wanted to know what he thought was offensive regarding the rezoning of this property. Mr. Tenn indicated that he would be happy to sit down with the Board and discuss the concerns of the Board and they would try to meet them but the present position of the land is that it is an industrially zoned piece of property with a variance to permit residential development. Mr. Tenn further stated that he was unsure what the concern was of the Board because the order has been final since 2009.

Mr. Côté pointed out that they have a variance and that variances have to be renewed as they do not stay in perpetuity. Mr. Côté also pointed out that Mr. Tenn argued that the land had to be residential because it could not be developed residential so when they looked at it they believed that it should be zoned residential so that Mr. Tenn did not have to keep going back to the ZBA. Mr. Tenn stated that they did go before the ZBA and they indicated that the variance was vested which is in the minutes of the ZBA. Mrs. Rouleau-Côté pointed out that that was not a function that the Zoning Board could do. Attorney Lazos said that putting aside the discussion with the ZBA because they did have that discussion with the ZBA. Attorney Lazos stated that once they start construction their variance is vested permanently. Mr. Côté agreed that once construction has begun the variance is vested. Attorney Lazos believed that the court order applies to the entire parcel and not just to what the Planning Board believes. Attorney St. Hilaire agreed. Attorney Lazos commented that they don't need this because they already have what they need. Mrs. Rouleau-Côté wanted to know why they couldn't clean up the Town of Auburn's Tax Map to show it as Residential.

At this time, Mr. Poltak wanted Attorney St. Hilaire for direction. Attorney St. Hilaire pointed out

that the ZBA did not have authority to say that they were vested in this. The question is, has the variance been exercised and once it has been exercised there is no expiration date unless abandonment has occurred. Attorney St. Hilaire did not believe there was a statement from them that what currently has been done at this point means they have reached a point of exercising this variance and that therefore the expiration date is gone. Attorney St. Hilaire believed that they are under the assumption that they have a two year window, rather than one and that they agreed that it would be triggered from October 20, 2013 approval by the Planning Board which is a fair interpretation of a trigger date. Attorney St. Hilaire explained that the court's decision states that the petitioner asks that the entire property to be rezoned as it was previously zoned Residential One. Attorney Lazos pointed out that Attorney St. Hilaire means variance. Mr. Côté added that that was what the Planning Board was trying to do was fixing it by bringing it back to what it was. Mr. Tenn indicated that they had no discussion from anyone at the town on what the reasoning was and believed it was unfair to keep coming to meetings and trying to respond to concerns the Board has when they have not received any notice. Mr. Tenn indicated that they wanted to do that for over 30 years and were forced to go to court to get what they wanted so with this in mind he would like things to remain as they are and that this amendment be removed from the warrant article.

Attorney St. Hilaire pointed out that there is no legal requirement to provide notice and believed that when this came before her to clean this issue up that she believed there would be nothing but support because this was exactly what the stacks of pleadings from the court stated should be done cause this should be treated Residential. Attorney St. Hilaire also pointed out that Mr. Tenn asked for the variance to be granted but that was because that was the legal avenue for relief to accomplish using the property as residential. The argument was that the property should have never been rezoned because no Industrial use can be made of this and that the property can only be used as residential. The court has told us that there is no industrial use so why are we keeping this industrial and to eliminate wondering if the variance is vested let's clean it up and make it residential. Attorney St. Hilaire stated that it was unfortunate that Mr. Tenn feels that this is upsetting to him because more or less the town has been told how to treat it so it was surprising to everyone involved that this is not agreeable.

Mrs. Rouleau-Côté wanted it noted that by rezoning it to Residential One it actually benefits the owner because Residential One has 2 acre zoning so for density and future development they will be able to use 2 acre zoning as opposed to 3 acre zoning. A discussion we have in the office is when it becomes very cumbersome when mortgage companies or real estate agents call or come in and ask what zone it is and how can single family be in an industrial zone and we try to explain that they have a variance that is court ordered. It becomes a little bit messier when we are trying to explain it so that is another reason why we decided to do this.

Attorney Lazos hears what Mrs. Rouleau-Côté was saying and went back to talking about the first site plan that they proposed on the remaining 50 acres with a nursing home, day care facility and multi-family homes. Attorney Lazos also stated that a connection to Dartmouth Drive was not doable as it would be very difficult. Discussion ensued with regard to doing cluster in a Residential Two and so Residential One would not work for them. Attorney Lazos informed the Board that their engineer was in Florida and suggested that they just leave it as it is currently as they have not thought about what they are going to do with the remaining 50 acres as they are focusing on the plan they currently have right now. Attorney Lazos thanked the Board for thinking about them but that the site is very difficult and has a long history and has some issues with the industrial property down below and think that it should be reviewed by their engineer. They chose the variance with the underlying Industrial intentionally. They were

focused on the current section of the property and do not think that the Residential One zone benefits his client or the town. They are not interested at going before the ZBA for a Special Exception as their history with the Board has been uneven. They would like to work with the town to see what they can come up with.

Mrs. Rouleau-Côté asked Attorney St. Hilaire that the court order did not specify if the property would be zoned Residential One or Residential Two correct. Attorney St. Hilaire said the court did not specify. Attorney St. Hilaire explained the site walk with the judge and his comment that he did not know how they were going to do residential never mind industrial. Attorney St. Hilaire further explained that they have two zones currently and what they are losing on the 50 acres that would be undeveloped is the ability to do what is permitted in the Industrial zone. Mrs. Rouleau-Côté was not comfortable with that because if the court said it was okay for them to develop it residentially then that doesn't mean a day care center it means residential only. Attorney Lazos answered by saying that he did not think they were entitled to do anything what they are saying is that they came in with a number of concepts that were not strictly single family residential but that he did not believe that Residential One did anything for them cause they were certainly going to do a cluster subdivision. Attorney St. Hilaire believed they would need a variance to do a cluster. Mrs. Rouleau-Côté said they would need a Special Exception in a Residential One zone. Attorney Lazos said not in a Residential Two zone because he would be entitled to do a cluster in the Residential Two zone. Attorney St. Hilaire thought that they would only be able to do that if they interpret the court order to indicate Residential One or Residential Two zone. Attorney Lazos stated that if they work with the town to come up with a rezoning that they would never agree to a Residential One zone and that they would only agree to a Residential Two zone because that would be the best use for that site because they would ask for a cluster immediately. Discussion ensued with regard to whether or not it would be Residential One or Residential Two zone. Mr. Tenn believed it should be the land owner making the decision with regard to the land. Mr. Tenn pointed out that the Building Inspector was present tonight and that he has never spoken to the Building Inspector and if the Building Inspector has issues or has a concern about what should happen then he would like to sit down and talk about it. Mr. Tenn only wants to find a solution to find out what the town needs and is in the best interest of the land. Mr. Tenn reiterated that this was the first that he has heard that the Building Inspector that there is a concern about the way the tax map was.

Ms. Woods acknowledged what Mr. Tenn was saying but reiterated that the Board thought they were doing him the best use of their time and his time that they could possibly achieve. Mr. Tenn thanked the Board members. Ms. Woods did not think that Mr. Tenn was receptive to what the Board members are proposing. Ms. Woods believed that they wanted their cake and eat it too and sees nothing wrong with that but was confused as to where they go from here.

Mr. Sullivan believed that they should discuss these types of changes in November so they have an opportunity for people to give them ideas or thoughts. It may not change the answer they come up with but we are attempting to make a change tonight and believed that they should wait until next year.

Discussion ensued with regard to whether or not Mr. Tenn would have any houses built by next year. Mr. Tenn did not know. Mr. Tenn asked to be able to speak with Mrs. Rouleau-Côté to see what her concerns were. Mrs. Rouleau-Côté indicated that her job was to bring things up before the Board to clean up the Zoning Ordinance and anything that comes along. This is basically something that comes before the Zoning Board yearly for renewal and did not understand why they were dealing with this every year. Attorney St. Hilaire reiterated that this

was not intended to blindside them in any way and in talking with Mrs. Rouleau-Côté is that this would solve a lot of problems.

Mr. Poltak believed that this was one of the more sophisticated and complicated one of which the site is a tough site. The infrastructure for this site is huge and could not see a house being placed on the site for at least a year from this spring. Mr. Poltak also pointed out that they need to review the court order and the potential for cluster and whether it is Residential One or Residential Two which has not been totally visited. There has been no communication between the community and the applicant so with this in mind; Mr. Poltak suggested that the Board remove the proposed amendment from the warrant article. Mr. Poltak wanted Mr. Tenn to be aware that they would be putting this on the warrant for next town meeting in March 2015. Mr. Sullivan agreed.

Mr. Poltak reiterated that they wanted it known that it is the Board's intent to move forward to have this piece of property zoned in accordance with the court's decision by mutual agreement with Mr. Tenn, the land owner and the community to see if it can't be done by mutual satisfaction.

Mrs. Marzloff moved to remove the proposed Amendment No. 12 from the warrant for this year. Ms. Woods seconded the motion. A vote was taken; all were in favor with Mr. Côté opposing, the motion passed by a vote of 4 to 1.

Mrs. Marzloff suggested that the Board and Mr. Tenn and whoever Mr. Tenn wants to bring to the table to meet in late spring to have a workshop to discuss the issues and how it will benefit everyone.

Mr. Tenn and Attorney Lazos thanked the Board members for their time and exited the meeting.

Mr. Poltak explained that he would now go through the rest of the proposed amendments and only read the amendment title and did not believe there were any issues and then they would make one motion at the end. If anyone had any comments they can make it at the end of each proposed amendment read. Everyone agreed and Mr. Poltak began reading each proposed amendment.

Proposed amendments include:

Proposed Amendment No. 1: Amend Article 2.02 # 6 Automobile and Similar Vehicle Sales Facility definition to read:

A building and/or lot used principally for the sale of new or used automobiles or other motor vehicles, with or without an accessory use for the repair or reconditioning of such vehicles. **No lot used for a Vehicle Sales Facility may be located any closer than 2,500 feet in any direction to another lot used for Vehicle Sales Facility.**

Proposed Amendment No. 2: Amend Article 2.02 # 22 Day Care Center definition to read as follows:

Day Care Center. A building used principally or as an accessory use to a single family dwelling to provide "baby sitting" type care for children **or adults** without a teacher or formal educational program. A day care center shall not be permitted in the Industrial

Zone unless it is accessory and incidental to another permitted business.

Proposed Amendment No. 3: Amend Article 2.02 # 29 Dwelling Unit, Multi-Family definition to read as follows, and re-number article:

(29). Dwelling Unit:

(a). Multi-Family: A residential structure containing three or more attached dwelling units, such as apartment house, multi-family town house or condominium occupied exclusively for residential purposes. Multi-family dwellings do not include commercial accommodations for transient occupancy. Multi-family unit shall require Site Plan Review Approval.

- **Amend Article 2.02 to include new definition Dwelling Unit – Duplex and read as follows, and re-number article:**

(29). Dwelling Unit:

(b). Duplex: A residential structure that contains two (2) attached dwelling units. The dwelling units must share a common wall or common floor/ceiling assembly, have separate access to each dwelling and meet all current building code standards.

Discussion ensued to include these two amendments into one amendment. Attorney St. Hilaire agreed and so it was decided to include the two (2) above as one amendment.

- **Proposed Amendment No. 4:** Amend Article 3.13 Multi Unit Dwellings to reflect the amendments proposed to Article 2.02(29)(a) and (29)(b), by re-titling sections 3.13 and 3.13(1) to read “Multi Family Dwellings” and “New Construction and Conversions of Existing Building to Multi Family Dwelling Units” and by replacing the term “Multi Unit Dwelling” with the term “Multi Family Dwelling” throughout the text of Article 3.13(1)(a) through 3.13(1)(c).

- **Proposed Amendment No. 5:** Amend Article 4 – District Regulations to designate Dwelling Unit, Multi Family shall be prohibited in Rural (R.), Residential One (R-1), Residential Two (R-2), Commercial One (C-1) and Industrial Zones and allowed by Special Exception in the Commercial Two (C-2) and Village (V) Districts.

Proposed Amendment No. 6: Amend Article 4 – District Regulations to change current description “Day Care Center 1 to 6 children” and “Day Care Center – over 6 children” to read “Day Care Center – 1 to 6 **Persons**” and “Day Care Center – over 6 **persons**”

Proposed Amendment No. 7: Amend Article 3.08 Parking to add:

(8) Parking of Vehicle for Sale from a Residence

The parking of vehicles for sale from a residence is restricted to one vehicle to which the property owner holds title.

Discussion ensued between the Board members regarding who should be allowed to sell a vehicle on a property and if it's a single family home or apartment building.

Mr. Poltak asked Mrs. Rouleau-Côté to explain the intent of this amendment and if it was to allow renters to sell vehicles. Mrs. Rouleau-Côté pointed out the intent of this amendment was not really talking about rental properties but was directed at single family and preventing continuous auto sales. There is already legislation that prohibits multiple sales of vehicles from a property which means I cannot put a car out front of my house every month. This is to prohibit someone from selling a vehicle every month.

Mrs. Marzloff wanted it changed from "Residential Property" to "a Residence" because there are single family homes in the Commercial Two zone and the Industrial zone. The Board all agreed with Mrs. Marzloff and the change was made.

Proposed Amendment No. 8: Amend Article 3.11 Temporary and Permanent Storage Facilities to read as follows:

The use of any structure, (including but not limited to cartons, tents, tractor trailers, mobile trailers, portable storage units and freight containers), for permanent storage shall require a building permit and shall meet all zoning district setback requirements. For purposes of this Article, "permanent" usage is defined as more than 180 days.

The use of any portable structure, (including but not limited to cartons, tents, tractor trailers, mobile trailers, portable storage units or freight containers), for less than 180 days will be considered temporary, it need not meet zoning district setback requirements, and no building permit will be required, unless the storage structure is permanently affixed to the ground.

Temporary storage in a portable structure which does not meet zoning district setback requirements may be permitted by the Building Inspector for construction purposes, but only for such time as the property is under active construction.

Proposed Amendment No. 9: Amend Article 14, Section 14.09 (1) to comply with recent legislative changes to extend expiration of variance from one (1) year to two (2) years.

Proposed Amendment No. 10: Amend Auburn Zoning Map:

Amend the current Commercial Two (C-2) (Village District Overlay) currently described with limits as "One hundred fifty feet (150') deep from its frontage on Manchester Road (Route 121) south towards Lake Massabesic and running from the west bank of Maple Falls Brook where it passes under Route 121 (Manchester Road) to the west sideline of Lot 2A, Tax Map 26" to entirely encompass boundary of Lot 2, Tax Map 26.

Proposed Amendment No. 11: Amend Current 3.10 Sign Regulations, by adding a new section 3.10(2) to include definitions, making minor modifications to various sections of the existing text of Article 3.10, adding several clarifications, and re-wording and re-numbering existing sections of Article 3.10, and adding a matrix of the various setbacks, heights and area requirements applicable to signs in the various zoning districts. A copy of the full language of the proposed amendment is available at the Town Office and is posted to the Town website.

A complete copy of the proposed changes to the Auburn Zoning Ordinance is available

for public inspection at the Auburn Town Offices and can be found at the Town of Auburn's website www.auburnnh.us.

Mr. Côté moved to recommend the Amendments to Zoning Ordinance as amended which includes Amendment No. 1 through Amendment No. 11. Mrs. Marzloff seconded the motion. A vote was taken; all were in favor, the motion passed.

OTHER

No other business was noted.

ADJOURN

Mr. Côté moved to adjourn the Hearing. Mrs. Marzloff seconded the motion. All were in favor, the motion passed unanimously and the meeting stood adjourned at 8:17 p.m.

The next Planning Board meeting will be a Public Hearing and should take place at the Town Hall, 47 Chester Road on Wednesday, January 22, 2014.