

**Town of Northwood
Planning Board Meeting
January 21, 2021**

Chair Strobel called the meeting to order at 7:00 PM.

Chair Strobel stated: As Chair of the Northwood Planning Board, I find that due to the State of Emergency declared by the Governor as a result of the COVID-19 pandemic and in accordance with the Governor's Emergency Order #12 pursuant to Executive Order 2020-04, this public body is authorized to meet electronically.

PRESENT: Chair Bob Strobel, Selectmen's Representative Hal Krieder and Lee Baldwin, Betty Smith Victoria Parmele, and Tim Jandebeur. (all members listed participated electronically)

TOWN STAFF PRESENT: Linda Smith and Susan Austin, Land Use Department. James Burdin, Town Planner.

VOTING DESIGNATION: Chair Bob Strobel, Selectmen's Representative Hal Krieder and Lee Baldwin, Betty Smith Victoria Parmele, and Tim Jandebeur.

PUBLIC HEARING: 2021 ZONING AMENDMENTS

Warrant Article 2: Section VI.A Wetlands Conservation Overlay District

Mr. Burdin stated that the intended purpose of these changes is to resolve numerous points of confusion in the existing overlay to make the entire section more user-friendly and explicit in its requirements. Minor regulatory changes are proposed in some sections.

Staff has the following comments regarding proposed changes:

Section A(1): No changes are proposed Section A(2): No regulatory changes are proposed. Both prime wetlands and locations where the Wetland Conservation Overlay District and Conservation Area Overlay District overlap are already regulated more strictly than other wetlands. Staff proposes the use of the term High-Priority Wetlands to provide a single term to refer to these areas of stricter regulation, and descriptions of how these areas are delineated have been moved from their current locations to appear under this term.

Section A(3): Several changes for clarity and organization, as well as minor regulatory changes. Changes to the introduction paragraph acknowledge that the spirit and intent of this overlay is to limit impacts to wetlands, so while some impacts are permitted by right, they should be minimized and mitigated wherever possible. New paragraph (g) adds impacts permitted by right at the encouragement of the Conservation Commission.

New Section A(4): The section regarding Setbacks has been relocated to appear before the section regarding Special Exceptions. Since Special Exceptions may grant relief to the regulations for the overlay proper and the setback areas, Staff preferred to establish the normal regulations in those areas first in the flow of the overlay.

Approved by the Planning Board on January 28, 2021

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Paragraph (a) is existing and has merely been located (though a portion is Draft for Public Hearing on January 21, 2021 proposed to be deleted as described below). Paragraph (b) is new and stipulates that any permitted activities within the setback must be done in a way that does not negatively impact the overlay area.

Section A(5): Renumbered from Section A(4). This section describes impacts that require a Special Exception and stipulates the requirements for issuing a Special Exception. Most changes are to clarify current requirements by explicitly stating aspects of how the ordinance is currently interpreted. Both sets of Special Exception criteria have a new paragraph [2] which explains that the burden of proof is on the applicant to submit materials that demonstrate why the impacts are necessary. The ZBA already operates with this understanding, but it has been added to be explicit.

Old Section A(5): The old Setbacks section has been relocated as described above. A portion of old section A(5)(b) regarding setbacks on pre-existing non-conforming lots is proposed to be deleted entirely. The Board felt that automatically reducing setbacks on pre-existing non-conforming lots was contrary to the spirit and intent of this overlay, and that new development under such circumstances should be subject to a Special Exception if it cannot comply with the full 20-foot setback. Nonconforming rights for pre-existing structures on these lots will not be affected by this change.

Section A(6): This is a new section dealing with the regulation of High-Priority Wetlands as delineated in Section A(2). The required 100-foot setback and stricter limitations on activities within that setback already exist in old Section A(5)(b), but have been reorganized in this section for clarity. Provisions that could previously be interpreted to apply only to the setback areas have been clarified to apply to both the setback area and overlay district itself. Two exceptions to the restrictions of this section have been added at the request of the Conservation Commission to allow certain environmental activities to occur by right. These activities are described in paragraphs A(6)(c) 1-3. These paragraphs make the proposed section less strict than the existing overlay regarding these issues. Paragraph A.(6)(d) explicitly clarifies the Town's current interpretation that relief in these high-priority areas cannot be granted using the Special Exception criteria for other sections of this overlay, meaning relief can only be granted by a variance.

NOTE FOR SECOND PUBLIC HEARING: The three further edits that were discussed at the January 7, 2021 hearing are all for the purpose of making the language of these sections consistent with new language proposed elsewhere in the overlay (e.g., referring to wetland "impacts" instead of "uses"). Staff feels that none of these edits will change the regulatory impact of the overlay, but are important for clarity and consistency within the document.

Warrant Article 3: Section VI.E Steep Slope Protection Overlay District

Mr. Burdin stated that a potential applicant recently brought this language discrepancy to Town staff's attention. In 2019 the Planning Board proposed an overhaul of the Town's Steep Slope Protection Overlay for clarity and to resolve several

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points of confusion or contradiction in the overlay. These proposed changes were ultimately adopted at Town Meeting 2020. The adopted changes included an error that referenced an application for a conditional use permit. In New Hampshire both conditional use permits and special exceptions are methods for granting relief from the requirements of the zoning ordinance (i.e., making an exception from the rules). While the common usage of the terms is such that conditional use permits are typically authorized by a Planning Board and special exceptions are typically granted by the Zoning Board of Adjustment, the two mechanisms function very similarly. In both cases, a land use board grants an exception to the zoning ordinance if certain conditions are met – these conditions must be clearly stipulated within the ordinance. The decision for which mechanism to use in a zoning ordinance is often a matter of preference by a community. This may be because one board is deemed to have particular expertise that makes them more qualified to hear certain applications, or because a process may be considered less onerous to applicants (if, for example, they also needed site plan approval from the Planning Board), or even as a way of distributing application workloads between the two boards. In 2019 the Planning Board briefly discussed changing the mechanism for granting relief to this overlay from a special exception to a conditional use permit. The Board ultimately decided to keep the special Draft for Public Hearing on January 21, 2021 exception, but the changes that appeared on the ballot and were adopted at Town Meeting contained an erroneous reference to a conditional use permit. This warrant article proposes to fix that error. Implications. At the very least, the error makes the current language more confusing. Section VI.E.(4) is explicit that a special exception is required to grant relief, but Section VI.E.(5), which lists the materials that must be submitted with an application, refers to a conditional use permit. The Town of Northwood does not currently have application forms for a conditional use permit; indeed, this is the only instance that the term is used in the entire ordinance. The error could carry more severe implications if it were interpreted on appeal to undermine the validity of the ZBA's processes for granting relief to this section; conditional use permits are frequently used to enact "innovative land use controls" as defined by RSA 674:21, and provisions enacted pursuant to this RSA cannot be appealed to the ZBA and must be directed to superior court. Staff cannot speak to the likelihood that these more severe consequences could arise, but would prefer to correct the error as soon as possible to avoid any potential complications.

Selectman Kreider made a motion to send Warrant Article 2 to the ballot, superseding the warrant sent at the last public hearing of January 7, 2021. Ms. B. Smith seconded. Motion carried by roll call vote 6/0

Ms. B. Smith made a motion to send Warrant Article 3 to the ballot. Selectman. Kreider seconded. Motion carried by roll call vote 6/0.

CASE 19-6:

Joseph Carter/Fatherland Family Trust. First NH Turnpike and Harmony Hill Road. Map 222 Lot 54. Applicant proposes a minor site plan review to build a miniature golf course and refreshment service.

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Mr. Burdin stated that he spoke with Mr. Carter over the phone on Tuesday, following up on their conversation from Thursday night. In following up with him, he did learn that the report he was talking about was received prior to the town's engineer sending back their questions, so that still needs to be resolved. Mr. Carter indicated that he was going to follow up with the engineer directly and let them either forward their contact information to Mr. Burdin, or let them know that they were authorized to work directly with Mr. Burdin. He has not heard from either Mr. Carter or the Engineer since that conversation on Tuesday. He would suggest that they continue this again.

Ms. B. Smith made a motion to continue Case 19-6 until February 11, 2021. Selectman Kreider seconded. Motion carried by roll call vote 6/0.

ADJOURNMENT

Ms. B. Smith made a motion to adjourn at 7:40 PM. Selectman Kreider seconded. Motion carried by roll call vote 7/0

Respectfully submitted

Susan Austin, Land Use Assistant