

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

DRAFT MINUTES

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

2
3 Chair Strobel stated: As Chair of the Northwood Planning Board, I find that due to the
4 State of Emergency declared by the Governor as a result of the COVID-19 pandemic
5 and in accordance with the Governor’s Emergency Order #12 pursuant to Executive
6 Order 2020-04, this public body is authorized to meet electronically.

7
8 **PRESENT:** Chair Bob Strobel, Selectmen’s Representative Hal Krieder and Lee
9 Baldwin, Betty Smith Victoria Parmele, and Tim Jandebuer. (all members listed
10 participated electronically)

11
12 **TOWN STAFF PRESENT:** Linda Smith and Susan Austin, Land Use Department.
13 James Burdin, Town Planner.

14
15 **VOTING DESIGNATION:** Chair Bob Strobel, Selectmen’s Representative Hal Krieder
16 and Lee Baldwin, Betty Smith Victoria Parmele, and Tim Jandebuer.

17
18 **PUBLIC HEARING: 2021 ZONING AMENDMENTS**

19
20 Warrant Article 2: Section VI.A Wetlands Conservation Overlay District

21
22 Mr. Burdin stated that the intended purpose of these changes is to resolve numerous
23 points of confusion in the existing overlay to make the entire section more user-
24 friendly and explicit in its requirements. Minor regulatory changes are proposed in
25 some sections.

26
27 Staff has the following comments regarding proposed changes:

28
29 Section A(1): No changes are proposed Section A(2): No regulatory changes are
30 proposed. Both prime wetlands and locations where the Wetland Conservation Overlay
31 District and Conservation Area Overlay District overlap are already regulated more
32 strictly than other wetlands. Staff proposes the use of the term High-Priority Wetlands
33 to provide a single term to refer to these areas of stricter regulation, and descriptions
34 of how these areas are delineated have been moved from their current locations to
35 appear under this term.

36
37 Section A(3): Several changes for clarity and organization, as well as minor regulatory
38 changes. Changes to the introduction paragraph acknowledge that the spirit and
39 intent of this overlay is to limit impacts to wetlands, so while some impacts are
40 permitted by right, they should be minimized and mitigated wherever possible. New
41 paragraph (g) adds impacts permitted by right at the encouragement of the
42 Conservation Commission.

43
44 New Section A(4): The section regarding Setbacks has been relocated to appear before
45 the section regarding Special Exceptions. Since Special Exceptions may grant relief to
46 the regulations for the overlay proper and the setback areas, Staff preferred to
47 establish the normal regulations in those areas first in the flow of the overlay.

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1 Paragraph (a) is existing and has merely been located (though a portion is Draft for
2 Public Hearing on January 21, 2021 proposed to be deleted as described below).
3 Paragraph (b) is new and stipulates that any permitted activities within the setback
4 must be done in a way that does not negatively impact the overlay area.
5

6 Section A(5): Renumbered from Section A(4). This section describes impacts that
7 require a Special Exception and stipulates the requirements for issuing a Special
8 Exception. Most changes are to clarify current requirements by explicitly stating
9 aspects of how the ordinance is currently interpreted. Both sets of Special Exception
10 criteria have a new paragraph [2] which explains that the burden of proof is on the
11 applicant to submit materials that demonstrate why the impacts are necessary. The
12 ZBA already operates with this understanding, but it has been added to be explicit.
13

14 Old Section A(5): The old Setbacks section has been relocated as described above. A
15 portion of old section A(5)(b) regarding setbacks on pre-existing non-conforming lots is
16 proposed to be deleted entirely. The Board felt that automatically reducing setbacks on
17 pre-existing non-conforming lots was contrary to the spirit and intent of this overlay,
18 and that new development under such circumstances should be subject to a Special
19 Exception if it cannot comply with the full 20-foot setback. Nonconforming rights for
20 pre-existing structures on these lots will not be affected by this change.
21

22 Section A(6): This is a new section dealing with the regulation of High-Priority
23 Wetlands as delineated in Section A(2). The required 100-foot setback and stricter
24 limitations on activities within that setback already exist in old Section A(5)(b), but
25 have been reorganized in this section for clarity. Provisions that could previously be
26 interpreted to apply only to the setback areas have been clarified to apply to both the
27 setback area and overlay district itself. Two exceptions to the restrictions of this
28 section have been added at the request of the Conservation Commission to allow
29 certain environmental activities to occur by right. These activities are described in
30 paragraphs A(6)(c) 1-3. These paragraphs make the proposed section less strict than
31 the existing overlay regarding these issues. Paragraph A.(6)(d) explicitly clarifies the
32 Town's current interpretation that relief in these high-priority areas cannot be granted
33 using the Special Exception criteria for other sections of this overlay, meaning relief
34 can only be granted by a variance.
35

36 NOTE FOR SECOND PUBLIC HEARING: The three further edits that were discussed at
37 the January 7, 2021 hearing are all for the purpose of making the language of these
38 sections consistent with new language proposed elsewhere in the overlay (e.g.,
39 referring to wetland "impacts" instead of "uses"). Staff feels that none of these edits
40 will change the regulatory impact of the overlay, but are important for clarity and
41 consistency within the document.
42

43 **Warrant Article 3: Section VI.E Steep Slope Protection Overlay District**
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45 Mr. Burdin stated that a potential applicant recently brought this language
46 discrepancy to Town staff's attention. In 2019 the Planning Board proposed an
47 overhaul of the Town's Steep Slope Protection Overlay for clarity and to resolve several

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

35
36 **Selectman Kreider made a motion to send Warrant Article 2 to the ballot,**
37 **superseding the warrant sent at the last public hearing of January 7, 2021. Ms.**
38 **B. Smith seconded. Motion carried by roll call vote 6/0**

39
40 **Ms. B. Smith made a motion to send Warrant Article 3 to the ballot. Selectman.**
41 **Kreider seconded. Motion carried by roll call vote 6/0.**

42
43
44 **CASE 19-6:**
45 **Joseph Carter/Fatherland Family Trust.** First NH Turnpike and Harmony Hill Road.
46 Map 222 Lot 54. Applicant proposes a minor site plan review to build a miniature golf
47 course and refreshment service.

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

10
11 **Ms. B. Smith made a motion to continue Case 19-6 until February 11, 2021.**
12 **Selectman Kreider seconded. Motion carried by roll call vote 6/0.**

13
14
15 **ADJOURNMENT**

16
17 **Ms. B. Smith made a motion to adjourn at 7:40 PM. Selectman Kreider**
18 **seconded. Motion carried by roll call vote 7/0**

19
20 *Respectfully submitted*

21
22 *Susan Austin, Land Use Assistant*