

PLANNING BOARD	December 21, 2021, 7:00 PM
TOWN OF HAMPTON FALLS	TOWN HALL

FINAL

PLANNING BOARD MEETING

A. CALL TO ORDER

Todd Santora, Chairman called the meeting to order at 7:02 PM, and welcomed back Andy Brubaker, and wished everyone a Merry Christmas.

B. ROLL CALL – PLANNING BOARD

Present: Todd Santora, Chairman; Eric Cimon, Vice-Chairman; Edward B. Beattie, Selectmen's Representative; Shawn Hanson, Lisa Brown-Kucharski, Abigail Tonry, Andrew Brubaker.

Non-voting: Mark Sikorski, Building Inspector; Glenn Coppelman, RPC Circuit Rider Planner; Rachel D. Webb, Town Secretary.

C. PUBLIC HEARING - DISCUSSION

The Public Hearing is not opened yet, as there is discussion necessary prior to holding the Public Hearing. T. Santora explained that there are two public hearings scheduled for tonight regarding potential changes to the Zoning Ordinance, for consideration on the Warrant for March 2022.

One of the two is in question, based on the advice of the Planning Board's Counsel, Mark Beliveau. T. Santora said that all Planning Board members received an email, dated December 8, 2021, regarding this subject, which he read into the record. The email suggested the Planning Board withdraw the proposed creation of a new Zoning Ordinance section 3.3.6 **Signs on Parked Vehicles**. One reason stated for the suggestion of withdrawal was that the proposal was content-based, and it was suggested to avoid content-based regulation of signs. The second reason given to suggest withdrawal was due to a recent US Supreme Court case (November 10, 2021), that may change the landscape on what signage regulation is permitted, and he recommended to wait until that decision is handed down to write a new ordinance. It should be noted that Planning Board Counsel also spoke with NHMA Counsel who is quite knowledgeable about sign regulation and he informed him about the recent US Supreme Court case.

In response to the email from Planning Board counsel dated 12/08/2021, T. Santora responded in an email December 15, 2021, which he read into the record. In summary, he stated that the Planning Board is not trying to regulate content of signs, but rather placement, and he asked if there was anything he could recommend. Planning Board counsel responded by email on December 21, 2021 saying that a sign ordinance with reference to advertising is what makes the proposed ordinance "content-based". Basically, if a code enforcement officer has to read a sign, in order to determine whether a regulation applies, then the ordinance is content-based. He stated further that the intent of the proposed ordinance is to regulate the physical characteristic of the sign, and that can be subject to reasonable regulation, without mention of content.

E. Cimon commented that if the wording in the second half of the first sentence was deleted, which makes reference to the sign content "the primary purpose...", then perhaps that may work, although then it may be too broadly interpreted and not specific enough. A. Tonry raised the question about each business having a limited amount of allowed signage area, and what if the allowed amount included signs on vehicles. L. Brown-Kucharski said no, the Planning Board can not do that because on the one hand the Planning Board wants businesses to come, locate and thrive on Route 1, and then on the other hand the Planning Board cannot limit how vehicles are

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lettered. A. Tonry responded that the Planning Board's concern were the signs on vehicles that have flat tires, are unregistered vehicles, and are parked at the edge of the street, and do not move.

E. Cimon explained that he was of the opinion that this may be an enforcement issue.

G. Coppelman said that the Planning Board's intent is to not regulate sign content, but rather where the sign is placed, not what is on the sign. He suggested the Planning Board consider the proposed language to end after the word "PROHIBITED". L. Brown-Kucharski wants to keep the language as straight-forward as possible, such as "no commercial trucks parked with flat tires, and unregistered".

T. Santora said that there are plenty of businesses that may park a fleet of commercial vehicles (with signage) overnight, but they are all gone in the morning, because the vehicles are in use during business hours (ex. Merry Maids, U-Haul, oil delivery trucks, etc.).

S. Hanson said that the subject is tricky because of definitions that the signage on a vehicle may not be considered a sign because it is not installed permanently fixed to the ground, since it is on a vehicle. T. Santora looked up the ordinance which specifies only one sign per building.

E. Beattie said that the difference is whether it is a useable vehicle or a sign. That maybe the language needs to specify that the vehicle needs to be registered and inspected, and actively used. E. Cimon suggested that the Planning Board respond with revised proposed language to Attorney Beliveau, specifying "signs on vehicles that are non-operable (flat tires), unregistered, and/or not inspected are PROHIBITED".

L. Brown-Kucharski expressed concern that the Planning Board needs to project an image of "pro-business", and that the intent of this proposal is to helping to make Route 1 look good/better to benefit all of the business community.

MOTION: To withdraw item C.2) on the agenda, to "Add a new subsection to the Town of Hampton Falls, NH Zoning Ordinance, Article IV Signs & Special Regulations section 3.3.6, Signs on Parked Vehicles".

MOTION: E. CIMON

SECOND: S. HANSON

PASSED: 6 YES, 1 ABSTAINED

C. PUBLIC HEARING

T. Santora opened the Public Hearing to Amend the Town of Hampton Falls, NH Zoning Ordinance, Article III, District Regulations, Section I, to add a sentence **to clarify permissive zoning** in Hampton Falls, to add the sentence, following the sentence that starts with: "Subsequent to passage of the Ordinance, buildings or land shall hereafter be used, constructed, altered or changed only in conformity with the regulations specified herein for the zoning district

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in which it is located. *Any use of a building, structure, or land not expressly permitted in this Ordinance shall be PROHIBITED.*”

T. Santora’s concern was how that would relate to the definition of “non-conforming”, and G. Coppelman responded that “non-conforming” is a whole category unto itself, with rules and procedures, so this does not overrule that in any way. He reminded the Planning Board that Attorney Beliveau had provided this proposed wording for this proposal. The additional sentence adds greater clarity to the ordinance. The proposal does not affect the issue of non-conformity.

T. Santora opened the Public Hearing for comments from the public. Beverly Mutrie, Brown Road, asked where is the list of uses for a structure in the ordinance, to which T. Santora responded the Table of Uses in the Zoning Ordinance. B. Mutrie also asked in which zoning districts would the proposed ordinance apply, and the response was every district. If the use is not expressly permitted in the ordinance, then the use is prohibited. G. Coppelman said that the proposed additional sentence is no different than the current ordinance, it just clarifies permissive zoning. The proposed additional sentence does not change the ordinance intent or use.

MOTION: To send the proposed change to the Warrant, of the Zoning Ordinance Article III, Section 1 to add the sentence: *“Any use of a building, structure, or land not expressly permitted in this Ordinance shall be PROHIBITED.”*

MOTION: L. BROWN-KUCHARSKI

SECOND: S. HANSON

UNANIMOUS

T. Santora closed the Public Hearing.

D. REVIEW AND APPROVAL OF PREVIOUS PLANNING BOARD MEETING MINUTES: November 16, 2021.

MOTION: To approve the minutes of the Planning Board from November 16, 2021, as written.

MOTION: S. HANSON

SECOND: L. BROWN-KUCHARSKI

PASSED: 6 YES, 1 ABSTAINED

E. OTHER PLANNING BOARD BUSINESS

1. Re-appointment of Andrew Brubaker to the Rockingham Planning Commission, for a four-year term. T. Santora explained that the Planning Board nominates, or recommends for reappointment to the Board of Selectmen, and then the Selectmen make the appointment.

MOTION: To recommend to the Board of Selectmen to reappoint Andrew Brubaker to the RPC for another four-year term.

MOTION: S. HANSON

SECOND: E. CIMON

PASSES: 5 YES, 2 ABSTAINED

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The second RPC Commission Richard McDermott's term comes up in April, so the Planning board will be voting on his term in March 2022.

2. Review of Ordinance and Regulations Committee proposals for amendments to the Zoning Ordinance and/or Regulations. T. Santora summarized that the Planning Board will continue diligently working on the following topics for proposed ordinance changes in 2022, namely, definitions of "hazardous materials", "non-conforming", and "multi-family housing".

F. COMMUNICATIONS TO BOARD MEMBERS

1. T. Santora mentioned that his and also Shawn Hanson's Planning Board appointments, are both up for re-election at Town Meeting in March 2022. S. Hanson said that he will not be seeking re-election. T. Santora said that he would be seeking re-election.

2. T. Santora informed the Planning Board that the Town of Seabrook is no longer interested in discussing with the Town of Hampton Falls the potential of sewer extension along Route 1. E. Beattie said that a year ago it was determined that Seabrook was at 47% capacity, so they potentially had the capacity to add Route 1 in Hampton Falls then, but currently they are no longer interested. There is a lot happening in Seabrook currently in terms of development, and the Town does not need to do a sewer project with Hampton Falls. Their 47% capacity from a year ago has probably changed as a result of all of the new development.

T. Santora said that Hampton Falls could build their own sewer treatment plant for that area along Route 1, as the Town has the land to do it. L. Brown-Kucharski asked if a feasibility study could be done to identify the cost effectiveness of that proposal, and T. Santora responded that a flow analysis was done by Jones and Beach Engineers, for a Build-Out scenario along Route 1.

E. Beattie said that he has asked K. Anderson, Town Administrator, to research and identify small towns that have done small sewer treatment units, as examples, to see how they did it.

G. ADJOURNMENT

MOTION: To adjourn the meeting at 7:55 PM.

MOTION: L. BROWN-KUCHARSKI

SECOND: E. CIMON

UNANIMOUS

NEXT PLANNING BOARD MEETING SCHEDULED TUESDAY, January 25, 2022, at 7:00 p.m.