**PLANNING BOARD**

**27 School Street**

**HILLSBOROUGH, NH**

**January 17, 2018**

 **DATE APPROVED**: February 07, 2018

**TIME:** 7:00 p.m. – 7:55 p.m.

**CHAIRMAN:** Herman Wiegelman

**FIRST VICE CHAIRMAN:** Donald Solomon

**SECOND VICE CHAIRMAN:** Gary Sparks

**MEMBERS:** Mike Reopel**,** John Penny and Gary Sparks

**EX-OFFICIO:** James Bailey III

**PLANNING DIRECTOR:** Robyn Payson

**ALTERNATES:** Terry Cutter**,** Larry Baker, Susanne White, Charles Denton, Robert Hansen

**EXCUSED:** Herm Wiegelman, John Penny, Mike Reopel, Robert Hansen, Jim Bailey

Public Present: Richard McNamara, Roger Racette, Roger Shamel, Susan Shamel, John Segedy

Roll Call and designation of Alternate Members, if necessary

Susanne White for Chairman Herm Wiegelman, Charles Denton (arrived-7:10) for Mike Reopel

Vice Chairman Don Solomon Chaired the meeting.

**Minutes**

01/03/2018 Susanne White made a motion to approve the minutes. Denise Deforest seconded the motion. The motion carried unanimously.

**Public Hearing**

Don Solomon opened the Public Hearing.

1. **Amend the “Table 4 Chart of Uses", "Commercial Uses" under the “Village Residential District” by allowing “Personal Services” “Repair Services” and “Retail Business” by Special Exception**

Planning Director Robyn Payson introduced the proposed article.

Susanne White expressed concern over the “Repair Business” and the effect it might have on the district. Robyn said that a “Repair Business” would require a “Special Exception” and would need to come to the Planning Board for a “Change of Use” and possible “Site Plan Review” to locate in the Village Residential District. Any potential impacts would be addressed during that process.

John Segedy said that the definition of “Repair Business”. He said the current definition did not address car repair and gas stations and needed to be clarified. Robyn pointed out that this definition was currently in the zoning and that was not going to change with this article. She said the Board could remove “Repair Business” from the list which would trigger a second Zoning Hearing to be held on January 31st.

Gary Sparks said he felt the definition it should be left “as is” because he didn’t find the definition confusing. He also said he was reluctant to make any significant changes with so few board members present. He was also concerned that there were members of the public unable to attend because of the weather. He said the suggestions could be taken in to account but doing something without more discussion.

Don Solomon pointed out that Automobile Repair and Gas Stations were allowed in the “Commercial Zone” and not in “Village Residential”.

John Segedy said he didn’t think a second hearing was necessary if you were removing one of the changes you were proposing. Don said that would be true if the Board decided to remove “Repair Business” from the article.

Don asked if any of there were any further comments.

John Segedy said there were no limits on the size of “Retail” business that would be allowed. Robyn explained that the definition of “Retail” was in the current Zoning Ordinance and that the Special Exception process would address issues like that.

Gary Sparks asked if the ZBA would have a problem with this change. John Segedy said the ZBA hadn’t discussed it.

Gary Sparks made a motion to accept the changes to the Table 4 Chart of uses as presented to put on the warrant for Town Meeting. Denise Deforest seconded the motion. The motion carried unanimously.

1. **Remove the language in 229-10 Stream and Shoreline Protection and replace it with a reference to RSA 483-B of the Shoreland Water Quality Protection Act**

Robyn said the purpose of this warrant article was to address the Shoreland Setback which is 75ft as opposed to the 50ft required by the DES “Shoreland Water Quality Protection Act”.

Over the past year, four of the five Variance applications were for setbacks from the median high water level. Most of the time, the applicant would come to the Variance hearing with their approved “Shoreland Application” from the state in hand. The Zoning Ordinance offers no basis for having a further setback that the state standard and there was no reason other than the town having the right to be more stringent than the state. Removing the language from the Ordinance and replacing it with a reference to State Statute seemed like a solution. However, this hasn’t been discussed with the Conservation Commission and it would make sense to do that and ask them what the scientific basis is to have a setback larger than what is required by DES. Because of this Robyn asked the Planning Board to vote to remove this article from consideration until there is an opportunity to meeting with the Conservation Commission.

Gary Sparks said there was time over the next year and make reference correction.. Robyn said that it would be important to take our timer to do this right. Gary said that the ZBA was having issues with this regulation but it is a touchy subject.

John Segedy said when he saw this he sent it to the Conservation Commission members and requested to see what the ordinance was going to look like. He had concerns about that and that a reference would replace the zoning language but there isn’t any wording. He said he didn’t feel there was adequate public notice because he still doesn’t have wording of what this is going to say. Also after being told by Robyn at that time that he wouldn’t have to worry about the wording because it was going to be removed from the warrant. He then notified the Conservation Commission members that they didn’t “have to worry about it” if they had any concerns. They have not had a meeting so he does not know if there is a concern or not. But he feels because of what’s been said in addition to concerns about the Zoning Board not having been consulted as yet. He strongly recommended that it be removed from the warrant.

Roger Racette, long time Chairman of the ZBA first pointed out that he was not there on behalf of the ZBA but as a private citizen. The ZBA had not met on this and he was present to share his insight. In the 25 years he was involved he could say without a doubt that most of the cases in which he had been involved most of the cases were lots and structures around Gould Pond and Franklin Pierce Lake. He felt that 229-10 predated the Shoreland Protection Act and it was just left there. There are a lot of people on these lakes that buy camps that were built in the 1950’s and they haven’t been able to improve their properties. He didn’t think that the Zoning should stand in the way of people improving their properties. Most of these applicants have already through the Department of Environmental Service permitting process. The ordinance says 75ft but if someone decided to take that to court we would have a hard time defending the 75ft setback.

Robyn said the Town does have the right to have rules that are more stringent that the state but the ordinance is silent about why there is a 75ft setback rather than 50 ft setback as required by the state. What is the scientific justification for 75ft?

Roger said there are minimum requirements in the Shoreland Protection Act that allow the town to be more stringent if they choose to. It makes sense with Loon Pond because it is the water supply that certain activities like swimming are prohibited. He said he would personally support this.

Roger Shemel who owns property on Contention Pond wanted to make a statement as to why the setback shouldn’t be changed. He said he and his wife Susan said these ponds are special and they were not in favor of reducing the set back to protect the waterfront. They were concerned about the enjoyment of the pond being reduced and more fertilizer would be used closer to the Shoreland. He said it would ruin the pond for people who have been here for over 25 years.

Robyn said that the Shoreland Protection Act not only addresses setback but also addresses disturbance of the land and fertilizer etc. It is far more stringent than just a setback. Robyn said that it was not the time to bring this foreword. Discussion with the Conservation Commission and more public input should occur before this be brought forward as a warrant article. The intention is certainly not to degrade the pond. It is more of a consistency issue as to whether or not we want to be consistent with the state.

Roger said he did not believe that extra 25ft would make a difference to the pond the Shoreland Protection Act regulates fertilizer and if someone is using Fertilizer on Loon Pond they would be in violation.

State Representative Richard McNamara testified ; no matter where the bar is there is always someone who wants to get closer. When its 50ft, then someone says they want it a little bit closer maybe 20 or 30 feet from the waterline. When it is 75ft you have a little leeway. The opinion he wanted to express was that he was not in favor of reducing the setback.

Roger said he wanted to address the statement that people would be doing things closer than the 50ft required by the state. Local land use boards cannot grant variance to the Shoreland Protection Act. Any request for a variance would have to go to the Commissioner of DES.

John Segedy said that the Zoning Board does not all agree that the setback should be reduced. There is some definite division of opinion. He said that part of the discussion was not knowing how this came in to effect. In that case the very first thing to do would be to do some research to through town meeting to find out when it was adopted and then go read the minutes and maybe answer the question.

Don closed the Public Hearing and entertained a motion to remove the article from consideration on the warrant. Charles Denton made a motion to remove the article from the warrant and bring it up at a later date. Susanne White seconded the motion. The motion carried unanimously.

Gary suggested making a motion to disapprove item #2.

Charles Denton withdrew his motion.

Gary formally made the motion to disapprove item #2. Susanne White seconded the motion. The motion carried unanimously

1. **Establish a Ground Water Protection District and adopt the associated map**

Robyn introduced the article by saying that again the Conservation Commission should have beam asked to weigh in on this ordinance before it was brought forward. She went on to say she wanted this ordinance not to be the bare minimum that would pass but to work on developing an ordinance that would be what Hillsborough needs. She therefore asked the board to disapprove item #3

Gary Sparks said that the Planning Board has been talking about an Aquifer Protection plan for over 10 years. It does appear if we take our time to make the right moves it makes sense to put it off a year but not put it on the back burner.

Gary Sparks said there needed to be time to lay the ground work and inform the public before an ordinance was brought forward.

Richard McNamara said the past week in hearings that there are bills about testing water in NH. There are many places in New Hampshire that ground water is compromised. In general once you lose the quality of that groundwater it is gone forever. In the long term, it makes sense to protect it.

John Segedy said he wanted to repeat the point about the notification of the Conservation Commission. He notified the Commission about the article but it was going to be withdrawn. He said he was sure they would have an interest.

The Public Hearing was closed

Don said that he thought that once you wanted to study something it was a death sentence. Those things drag out for 10 years again. Apparently we are not ready to have a ground water protection district delineated. He said he didn’t thing we would see it next year or for many years.

Robyn pledged to finish the Aquifer Protection Ordinance in time to put it on the ballot for next year. 2019

Meeting adjourned at 7:55 pm

Respectfully Submitted:

Robyn Payson, Planning Director

