

**PLANNING BOARD
DECEMBER 3, 2015
MINUTES**

Chairman Perkins called the meeting to order at 6:30 PM at the Town Hall

Members present: Perkins, Barringer (participating remotely), Burke, Giger, Vega and Wilson

Members absent: Svarczkopf

JOINT MEETING WITH TOWN COUNSEL

The Planning Board met with Zoning Board of Appeals Members Maxwell, Cadle, Easom, Manugian, and Mulligan, the Board of Health Members Fleischer and Horowitz, Selectmen Stuart Schulman and Anna Eliot, and Town Counsel David Doneski to discuss resolving issues regarding the non-use provisions of the Zoning By-law. Selectman Schulman chaired the discussion. Land use Director Michelle Collette, Zoning Board of Appeals Assistant Margot Hammer, and design engineer Dan Wolfe of David Ross Associates also participated in the discussion.

Attorney Doneski said there have been many concerns raised about Section 218-6 Non-Conformance for many years. He recommended that the Town look at how to refine the provisions on non-use and non-conforming structures and uses. He said he would like to identify common interests and come up with language that is workable for all parties.

Selectman Schulman said zoning requires 80,000 SF and 225 ft of frontage throughout the Town and there are many ambiguities in the rules. ZBA Member Manugian said the ZBA must consider all aspects of the Zoning By-law.

Planning Board Member Burke said there is a considerable amount of litigation regarding non-conforming uses and structures throughout the State. Chapter 40A, section 6, gives Towns the ability to adopt "non-use" or "abandonment" provisions. Groton adopted the two-year "non-use" requirements in Section 218-6. Non-use is much easier to interpret than abandonment which must consider intent. Land Use Director Collette noted that such provisions have been in Groton's zoning since 1963.

Board of Health Member Horowitz said the Board of Health has rigorous standards. Often, a well and sewage disposal system cannot be supported on a non-conforming lot. The Board of Health feels totally ignored by the ZBA. ZBA members objected and said they do not ignore the Board of Health.

Attorney Doneski said there is no definition of "non-use" in the Zoning By-law. The language in Section 218-6B is basic. He said a definition cannot capture all possibilities. He asked how many non-conforming lots there are in Groton. Land Use Director Collette said there are

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hundreds of non-conforming lots in the village areas of Lost Lake, the Town Center and West Groton.

Attorney Doneski said the ZBA can only grant variances based upon shape, soil, and topography standards in Chapter 40A, section 10, and Zoning By-law Section 218-33B(2). However, if the ZBA grants a variance and it is not appealed, the variance stands. He asked how the Town would like to resolve the situation.

Board of Health Member Horowitz said the Board of Health must consider Title Five, local health regulations and the water quality of the lake.

ZBA Assistant Hammer said grandfathered lots with 5000 SF and 50 ft of frontage are allowed to build by-right if there is no structure on the property. She asked why applicants should not be allowed to improve dilapidated structures that have not been used for more than two years.

Dan Wolfe said he has represented many clients with non-conforming lots. It is his understanding that the grandfathered rights have already been exercised if there is a structure on the property. He explained the constraints of Title Five in locating wells and sewage disposal systems on small lots.

Selectman Eliot said this issue is a matter of equity of the land and equal treatment of vacant lots and lots with structures to be demolished.

Board of Health Member Horowitz asked about the number of potential lots in existence. Land Use Director Collette said an inventory of non-conforming lots in Lost Lake is contained in the Environmental Impact Report (EIR) for the Lost Lake sewage project.

ZBA Member Manugian said the Seasonal Conversion requirements of Section 218-17 should be included in the discussion. She asked if we are discussing non-conforming uses, structures or lots. Planning Board Member Burke noted that the recent litigation at 101 Lost Lake Drive was an issue of non-use, not a non-conforming use or change of use.

Selectman Schulman said when he was on the ZBA, they often considered whether parcels had merged when people owned adjoining lots. He asked if the group agreed that non-conforming lots with shacks should be treated the same as vacant non-conforming lots. Most people agreed. Planning Board Member Giger said only if the structure is removed.

Attorney Doneski said it may be cleaner legally to remove the non-use penalty of Section 218-6.

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ZBA Assistant Hammer said a special permit should be required for non-conforming lots with existing structures. Planning Board and ZBA members agreed. Attorney Doneski said he would prepare a first draft of a proposed amendment for discussion.

PUBLIC HEARING – DERMCO SPECIAL PERMIT, 530 OLD DUNSTABLE ROAD

The Board held the continuation of the public hearing application submitted by Michael Dermody for Flexible Development and a Shared Driveway to serve three new lots on Old Dunstable Road. At the request of the applicant, the Board voted unanimously by roll call vote (Perkins – yes, Barringer – yes, Burke – yes, Giger – yes, Vega – yes, and Wilson – yes) to continue the public hearing on December 10, 2015 at 7:30 PM.

Meeting adjourned at 7:45 PM

Respectfully submitted,

Michelle Collette, AICP
Land Use Director/Town Planner