

TOWN OF BEDFORD
March 22, 2021
PLANNING BOARD
MINUTES

A remote Zoom platform meeting of the Bedford Planning Board was held on Monday, March 22, 2021. Members who were present remotely: Jon Levenstein (Chairman), Hal Newberry (Secretary), Bill Duschatko (Town Council), Kelleigh Murphy (Town Council Alternate), Mac McMahon, Pricilla Malcolm, Steve Clough, Charlie Fairman (Alternate) (arrived late), Matt Sullivan (Alternate), John Quintal (Alternate), Becky Hebert (Planning Director), and Jillian Harris (Assistant Planning Director)

Due to the Coronavirus crisis and in accordance with Governor Sununu's Emergency Order #12 pursuant to Executive Order 2020-04, the Planning Board is using the Zoom platform to conduct this meeting electronically. Please note that there is no physical location for this meeting and the BCTV building is closed to the public.

The Town of Bedford is providing public access to the meeting live on BCTV, streaming at www.Bedfordnh.org/393/BCTV, and by calling into the meeting. Please email planning@bedfordnh.org or call 603-472-5243 to receive the Zoom call-in information.

Planning staff will also be accepting questions and comments by email at planning@bedfordnh.org. Please notify staff by email if there are technological issues during the meeting.

I. Call to Order and Roll Call:

Chairman Levenstein called the remote meeting to order at 7:00 p.m. All members were present.

II. Old Business & Continued Hearings: None

III. New Business:

1. **Nicolas & Jennifer Pakler (Owner & Applicant)** – Request for approval of lot line adjustment between two parcels of land located at 119 McAllister Road and 8 Cobtail Way, Lot 2-12-6 and Lot 2-12-1, Zoned R&A.

IV. Concept Proposals and Other Business:

2. Discussion of proposed amendments to the Planning Board Rules of Procedure.

Ms. Harris stated the new application has been reviewed by staff, and it is staff's determination that the application is complete. The abutters have been notified, and it is the opinion of staff

that the application does not pose a regional impact. Staff would recommend that the Board accept the application as complete.

MOTION by Ms. Malcolm to accept the agenda as read. Councilor Duschatko duly seconded the motion. On a unanimous roll call vote, the motion carried.

1. Nicolas & Jennifer Pakler (Owner & Applicant) – Request for approval of lot line adjustment between two parcels of land located at 119 McAllister Road and 8 Cobtail Way, Lot 2-12-6 and Lot 2-12-1, Zoned R&A.

Earl Sandford of Sandford Surveying & Engineering was present to address this application for the approval of a lot line adjustment. Nicolas and Jennifer Pakler were also present.

Mr. Sandford stated we are at the corner of McAllister Road and New Boston Road. You have the corner lot and then the Pakler's home lot, which is on Cobtail Way. The existing boundary, as we did it for the Cobtail subdivision, we had to work around the lot and we ended up with a very pointy corner of the Cobtail lot, as indicated on the screen. It also comes fairly close to their house. It is a better balance. They have some improvements they would like to make and able to swap approximately four tenths of an acre and facilitate the ability to do a little more of what they would like to do. It actually requires three pieces because we didn't want to leave the end of the little pointy thing up on New Boston Road, so there is an A, B and C. A would be coming out of the McAllister Road lot and going into the Cobtail lot; B would be coming out of the Cobtail lot going to the McAllister Road lot; and then C would also be coming out of the Cobtail lot, which is that little tiny triangle in the corner just to help square things up, and going into the McAllister Road lot, so it is fairly simple.

Mr. Sandford stated there is a waiver. What we did is we took the soils and topography that we had from our previous subdivision for Cobtail, and there was also a subdivision by another surveyor for the McAllister Road site, and we just asked for a little leniency. Because this isn't creating a new lot, it is simply a boundary line adjustment, we requested that we use that as the basis of doing high intensity soils. We went through that based on that, and these are conforming lots in their final shape. That is just to understand when you vote on the waiver, you are just voting that we use older information rather than trying to update because of the simplicity of what we are asking for.

Mr. Sandford stated that is basically it. This isn't facilitating any future subdivision or anything like that, it is just being able to better utilize the backyard at Cobtail Way, is my understanding. I would certainly encourage the owners to state anything that they would like. We can open it up for questions and hopefully answer whatever you have.

Chairman Levenstein asked the Pakler's own both houses? Mr. Sandford replied yes. As far as I know. I am not sure whether it is the same legal entity or not. Mr. Pakler responded we own both. Neither are in an LLC; they are both owned jointly. Chairman Levenstein asked is the other one occupied? Mr. Pakler replied it is. We have a tenant.

Chairman Levenstein asked the Board members for any comments or questions.

Mr. McMahon stated this is logical and a good idea.

Chairman Levenstein asked if there were any members of the public that have joined the Zoom meeting, on the phone or emailed regarding this application. Ms. Hebert responded there is no one that has joined the call to speak on this application, and I have not received any email communications.

Chairman Levenstein stated the Planning Board has gotten smaller since the last time we met as the Town Charter has been amended and the Town Manager and the Director of Public Works are no longer members of the Planning Board. Ms. Hebert stated you now have a 7-member board. You have a vacant regular member position at this time. You can appoint an alternate to vote. Chairman Levenstein appointed Mr. Fairman to vote in place of the vacant position.

MOTION by Mr. Fairman that the Planning Board accept the following waivers from the Bedford Land Development Control Regulations:

- **Section 218.1.11: Topographic Survey**
- **Section 218.1.12: High Intensity Soils Survey**
- **Section 218.1.13: Wetland Mapping**

Ms. Malcolm duly seconded the motion. On a unanimous roll call vote, the motion carried.

MOTION by Councilor Duschatko that the Planning Board grant final approval of a lot line adjustment between 119 McAllister Road and 8 Cobtail Way, Lot 2-12-1 and Lot 2-12-6, owned by Nicolas and Jennifer Pakler, as shown on plans by Sandford Surveying & Engineering, Inc., last revised February 3, 2021, with the following conditions to be fulfilled within one year and prior to plan signature.

- 1. The Planning Director and Public Works Director shall determine that the Applicant has addressed all technical review comments to the Town's satisfaction.**
- 2. All recording fees shall be submitted to the Planning Department at the time of recording.**
- 3. If the requested waivers are approved by the Planning Board, the plan shall be revised to note the waivers and the date of approval.**
- 4. A letter shall be submitted to the Planning Department by a Licensed Land Surveyor certifying that all boundary monumentation has been set as noted on the approved plan, or the boundary monumentation may be set and shown on the plan.**

Mr. McMahon duly seconded the motion. On a unanimous roll call vote, the motion carried.

2. Discussion of proposed amendments to the Planning Board Rules of Procedure.

Ms. Harris stated as the Planning Board knows, there is the recent Charter amendment that removes the Town Manager and Public Works Director as Ex-officio members of the Planning Board. We proposed some amendments to address that in the Rules of Procedure. That would make updates to remove them from the list of members and also to make updates to what constitutes a quorum now that it is a 7-member board.

Ms. Harris stated in addition to that, we have also proposed some amendments to the advertising requirements. State law requires that public meetings are posted in two public places at least 24 hours in advance of the meeting, or that the meetings are advertised in the newspaper. The Town is currently doing both of those things in addition to posting on the Town's website and also doing notification to abutters. Over time the cost of advertising in the newspaper has grown such that it is now a significant expense to the Town, and we also realize that the public largely gets their information from the web, which is where we have been posting it anyway. We have proposed removing the language from the rules that require advertisement in the newspaper, and we will continue to do all of the other postings that we normally do.

Ms. Harris stated lastly, we recommended adding some language to Section 6.1 for the regular meeting schedule that would include a virtual meeting option that is permissible pursuant to the Governor's emergency order.

Chairman Levenstein stated it is my understanding that we need to hold a public hearing on this. Ms. Hebert replied yes. You do need to hold a public hearing when you amend your Rules of Procedure, so the recommendation tonight is to discuss the amendments and staff is recommending that you schedule the public hearing your next meeting on April 12, 2021.

Chairman Levenstein asked the Board members for any comments or questions.

Mr. Newberry stated I have a question on the quorum. The quorum would be four members, and that raises the question in my mind of how we would break a tie. Ms. Hebert stated according to Roberts Rules of Procedure, a tie vote fails.

Mr. Newberry stated a comment I have is I was under the impression that the Town Manager and Public Works Director would still be sitting on the Board but no longer be voting members. Is that incorrect? I think their absence is really potentially detrimental to the Board having a complete picture from the perspective that both of those positions can bring to each application that the Board is hearing. Ms. Hebert responded State law sets out how Planning Boards can be made up, and there was the 9-member option and the 7-member option, and it does not allow for that ex-officio non-member participation by staff. The Town Manager and the Public Works Director are going to be kept apprised of Planning Board agendas and participating in the staff level plan review meetings and will attend as needed, but they are not officially listed in the Rules of Procedure as members of the Planning Board. Chairman Levenstein stated Public Works reviews everything anyway, don't they? Ms. Hebert replied they do. The Public Works Director and the Town Manager get copies of all of the planning applications ahead of your meeting and have opportunities to comment on those applications and to attend the meetings if

there are any issues or concerns or special items that need to be addressed. Just another thought, moving forward if there are items that you feel need additional review by the Town Manager or the Public Works Director, I would recommend speaking up and asking for that additional review and applications can be postponed to a subsequent meeting to allow for their weigh-in. Mr. Newberry responded that should work. Thank you.

Mr. McMahon asked would it reach more people on BCTV or on the Town website? Ms. Hebert responded that is a good question. We do post the meeting agendas on the Town website; I believe BCTV keeps a program that they publish, so they are publishing our meeting out in their programming. If they have broadcasting schedules, they are going to be listing the Planning Board on Monday night at 7:00 o'clock and would show links to those agendas, but we don't have that as part of the legal posting. Mr. McMahon stated I was just curious on how we could get the word out. Ms. Hebert stated that is a good thought.

Ms. Malcolm asked how much did it cost to advertise in the newspaper? Ms. Hebert replied the recent Historic District Commission agenda was \$132.00. Ms. Malcolm asked per week? Ms. Hebert replied per meeting. Ms. Malcolm asked that is just for the *Bedford Bulletin*? We never advertise, for example, in the *Union Leader*? Ms. Hebert responded occasionally we will advertise in the *Union Leader* if there is a deadline we can't meet. The newspapers also have lead times in which they need the advertisement sent to them so they can organize their print. The *Union Leader* is more expensive.

Mr. Fairman stated I have one question on Section 6.1. I guess I will let the lawyers answer this, if they would like. Section 6.1 says 'permissible pursuant to the Governor's emergency order.' It seems to me that should say 'to a Governor's emergency order.' Rather than being so specific to the past form, we ought to be talking about thinking about any Governor's emergency order that is applicable. Chairman Levenstein responded I think 'the Governor' is the Governor. It doesn't necessarily mean that this order is the only order. Councilor Murphy stated you could say 'an order of the Governor' or you can say 'the Governor's emergency order,' but if you say 'a Governor's order,' then technically the Governor of Texas can tell you how to hold your meetings. Mr. Fairman stated I like some of your wording better than mine. I think 'an emergency order by the Governor' just seems to me that saying 'the Governor's emergency order' implies that there is only the one that we have had. Like I said, if it is okay the way it is and you all agree, then that is fine. Chairman Levenstein stated Ms. Hebert, why don't we change it to what Councilor Murphy said. Ms. Hebert stated I prefer Councilor Murphy's wording, and I am also wondering if emergency order should be lower case. Councilor Murphy responded if they are not referring to a specific order, it should be lower case.

Mr. Quintal stated I have a questions regarding Section 6.1. I am not sure if it is possible at all, but once the order expires, is there anything that would prevent us from using the Zoom platform still for residents that can't get out that want to participate in the meeting. Chairman Levenstein asked could you have both, Ms. Hebert? Ms. Hebert replied I don't believe at this time we can have both. Chairman Levenstein asked what about calling in for a meeting? Ms. Hebert responded you can have members call into a meeting, but I don't know that there is anything specific about public participation electronically or solely holding the entire meeting

electronically. I think that there are some changes at the State Legislature to maybe allow electronic meetings to continue and it is something that we will track.

MOTION by Mr. Newberry that the Planning Board schedule a public hearing on Monday, April 12, 2021 on the proposed amendments to their Rules of Procedures as drafted and discussed. Councilor Duschatko duly seconded the motion. On a unanimous roll call vote, the motion carried.

V. Approval of Minutes of Previous Meetings:

MOTION by Councilor Duschatko that the February 8, 2021 Planning Board minutes be approved as presented. Mr. Fairman duly seconded the motion. On a roll call vote, the motion carried, with Mr. Newberry and Chairman Levenstein abstaining.

VI. Communications to the Board:

Ms. Hebert stated I wanted to review the Town election results with the Planning Board. Congratulations to Bill Duschatko and Kelleigh Murphy for being elected to the Town Council. Councilor Murphy has stepped down as a regular member of the Planning Board but was recently appointed to serve as Town Council Alternate on the Planning Board. Councilor Duschatko is going to remain the Planning Board Town Council regular member for this year.

Zoning Amendment #1 passed at Town Meeting and this was the amendment to reduce the proposed building height in the Performance Zone from 80 feet to 60 feet. *Zoning Amendment #2* also passed at Town Meeting. This amendment repealed the River Corridor Smart Growth District, which was a zoning tool that was on the books but had not yet been fully enacted by the Town and it caused some confusion. *Zoning Amendment #3* was submitted by Citizens' Petition and this was the zoning amendment that would have altered the Planning Board's authority with regard to granting of waivers in the Performance Zone when they were associated with permitting uses that weren't otherwise listed as permitted in the district. This zoning amendment did not pass, so there have been no changes to the Planning Board's authority with regard to the power to grant waivers in the Performance Zone.

Ms. Hebert stated our Chairman, Jon Levenstein, has made it known that he is not going to renew his membership for 2021, so his last meeting will be April 26th. If for some reason that April 26th meeting is cancelled, his last meeting would be April 12th. We are really going to miss him as Chairman, and if anyone is interested in learning more about the Chairman position or would be interested in serving as Chairman, please reach out to me via email.

VII. Reports of Committees: None

VIII. Adjournment:

MOTION by Mr. McMahon to adjourn at 7:31 p.m. Councilor Duschatko duly seconded the motion. On a unanimous roll call vote, the motion carried.

Respectfully submitted by
Valerie J. Emmons