

**Town of Grantham**  
**Planning Board Meeting Minutes**  
January 3, 2019

**APPROVED**

**I. CALL TO ORDER**

Acting Chair Peter Guillette called the meeting to order at 7:01 p.m. The meeting was held in the Jerry Whitney Memorial Conference Room of the Grantham Town Hall located at 300 Route 10 South in Grantham, NH.

**Present:** Acting Chair Peter Guillette, C. Peter James, Mary Hutchins, Selectmen's Representative Connie Jones and Clerk Stuart Kaufman

**Members not present:** Chair Carl Hanson

**Applicants and Members of the Public:** Sheridan Brown, Conrad Frey, Pat MacNeil, Robert McNeil, Ed MacNeill, Mary Jo Weber

**II. APPROVAL OF MINUTES**

Acting Chair Peter Guillette asked the Board if there were any corrections or changes to the November 1, 2018 meeting minutes. C. Peter James requested that they table the approval of the minutes due to the absence of Chair Hanson and several questions from the lengthy discussion about Gray Ledges proposed Old Brick Building Demo that took place at the meeting. C. Peter James made a motion to table the minutes. Mary Hutchins seconded. **Unanimously Approved and Accepted (4-0).**

Acting Chair Peter Guillette asked the Board if there were any corrections or changes to the December 6, 2018 meeting minutes. Amendments: Page 2, Line 28 Change "would only be" to would not only be."

Mr. Brown noted that he raised concerns about the proposed ordinances and his comments weren't noted in the minutes.

Ms. Hutchins noted the State of New Hampshire doesn't have any rules regarding AirBnBs, but according to a *Valley News* story "as of Dec. 11, 2018 NH collected \$2.9m in state taxes in a year's time and 3,500 active hosts in the State made \$61,000 in a year." Acting Chair Peter Guillette said they would take up the agenda item later in the meeting.

C. Peter James made a motion to approve the minutes. Mary Hutchins seconded. **Unanimously Approved and Accepted (4-0).**

**III. NEW BUSINESS**

1. Application for Annexation - Application #01-2019-01; Bryan and Mary Jo Weber, Merger of abutting property Lots; M/L 216-129 and 216-128.

Applicant Mary Jo Weber stated that she and her husband originally bought the property (30 Old Spring Drive) where they own a house. Ms. Weber said there's a vacant lot next door that she and her husband purchased in November. Weber said she would like to put the two lots together and potentially down the road have a garage and not have a neighbor on top of us.

Acting Chair Guillette asked if there were any questions from the Board to the Applicant. He then opened up the meeting for questions from the public about the application. Hutchins made a motion to approve the application. Seconded by James. **Unanimously Approved and Accepted (4-0)**. Acting Chair Guillette told the Applicant she will be receiving a letter from the town in a few days.

#### **IV. OLD BUSINESS:**

##### **1. Proposed Zoning Board Amendments #11-2018-01; Conrad Frey ZBA Chair**

Acting Chair Guillette asked Mr. Conrad Frey to speak to the proposed Amendments to the Grantham Zoning Ordinance. The request affects only Rural Residential District One (RR-1) with a one acre lot size. Currently "Agriculture Uses and Forestry Uses" is listed as a permitted use in this district. The request is to place "Agricultural Uses and Forestry Uses" under the category of "permitted use by special exception" rather than as a permitted use per se. Referring to a summary of what was approved at the previous meeting, Mr. Frey noted that Chair Hanson made one change to the amendment, putting the word "Commercial" in front of Agriculture Use and Commercial Forestry Use on page 14.

Mr. James asked Mr. Frey how he was going to define "Commercial" as well as handle issues related to enforcement. Mr. James stated that it was open to subjective interpretation. Mr. Frey replied that common sense would prevail. Mr. James was concerned about the vagueness and enforcement of the regulation. Mr. Frey responded that it wasn't a regulation. Putting in the special exception category means the variance needs to be checked out. Mr. James noted that the state goes out of its way not to put restrictions on agriculture and the burden of proof comes back to the town, creating an issue concerning enforcement. Mr. Frey said he would have a good judgement recognizing agriculture.

Selectman's Representative Connie Jones said the Board has the authority to handle enforcement, but it would be better to have some defined parameters.

Acting Chair Guillette opened the discussion to the public. Mr. Robert MacNeil asked about the definition of "commercial" and whether it's defined by demonstrating that you'll try to sell or offer a product for a fee and compensation and judge it on the success of the venture. He said it wouldn't be based on volume, but on intent. Ms. Hutchins read the ordinance of agriculture use related to zoning, listing the special exception criteria.

Mr. Sheridan Brown addressed the legal issues related to the ordinance. 1) The difficulty in determining what is commercial. He said it can be anyway you define it in the zoning ordinance. Mr. Brown also addressed the problem of enforcement. 2) The issue of putting the word commercial in the ordinance. He stated, every law needs to have some rationale basis and there is no rationale basis for writing an ordinance that distinguishes between commercial and non-commercial agriculture. Folks coming in with a commercial application and getting denied are going to ask why someone can do the same thing because it's non-

commercial. After to crafting the ordinance and you can't say here's the language and it's someone else's job to enforce it. Brown suggested crafting the ordinance and then walk through the criteria of a special exception. As you go through the criteria for a special exception you're going to realize that they would be equally applicable to a commercial and non-commercial agriculture operation. So it would make more sense to say that all agriculture will require a special exception. The reason why we're putting the word "commercial" into the language is because it's a deal-sweetener for some people who go to the polls. It will be less offensive for them because they don't do commercial agriculture – and it would ultimately be an unenforceable ordinance. It's going to make a ridiculous distinction between "commercial and "non-commercial activity" that can have the same impact.

Restating Mr. Brown's comment, Acting Chair Guillette said by taking out the word "commercial and replacing it with all agriculture you're eliminating that issue.

Ms. Hutchins said I don't think Mr. Frey asked for the word "commercial." I think someone proposed putting the word "commercial" in the ordinance to make it more amiable.

Mr. Brown said the initial rationale being proposed is not going to work to limit some of those things. He added, State law is pretty preemptive regarding agriculture and forestry and how far you can go. And if anybody thinks it's going to prevent a clear cut they're kidding themselves. You're not going to take things that State law has favored in a statute and suddenly zone them out. I don't see it as viable and if you can't enforce it – why put it in the code. You can't write a stand-alone code.

Mr. Frey decided to withdraw the amendment for now.

## **2. Adding "AirBnBs to the existing "permitted use by special exception of "Bed and Breakfast Facilities" in Rural Residential Districts One (RR-1) and Rural Residential District Two (RR-2) as well as the Central Village Residential District.**

Acting Chair Guillette asked Mr. Frey to speak to the proposed Amendments to the Grantham Zoning Ordinance. Mr. Guillette asked if he wanted to add article definitions to fall under AirBnB type rentals. Adding the following: "Short term home rentals for a fee by a non-real estate licensed homeowner can be done privately or by utilizing the various corporate entities that serve the AirBnB type industry."

Ms. Hutchins added, I don't know how we're going to enforce this as well. We can't go into someone's home and tell them if they can rent it or not.

Acting Chair Guillette opened the discussion up to the board.

Mr. James said most of the issues with AirBnBs deal with party houses. Problems such as sanitation or noise are covered by other regulations. Unless someone comes in and volunteers the information we're not going to know if it's existing or not.

Acting Chair Guillette opened the discussion up to the public. Robert MacNeil made the following observations: AirBnBs is a trade name and it would have to be generic for the rental of a residential component (Example – Nurses at Dartmouth-Hitchcock who rent a bedroom during the week and then go home) Are you intending to regulate that? If the issue of noise arises, it doesn't become a rental versus a guest staying at a place. It's a question of

causing harm to neighbors. He asked, does it matter if someone rents, lives or is a guest there? Why would you want to regulate that?

Mr. Frey, citing an issue with a home in Eastman during the weekend, spoke about the many ordinances in Grantham, He said some ordinances have been ignored and it's also a concern with many towns in the State.

Mr. Frey said he's willing to scratch the second amendment. He stated, if you have to scratch Amendment #2 you have to scratch Amendment #3 (Short term home rentals by a non-real estate licensed homeowner either privately or by utilizing any various corporate entities that serve the AirBnB industry). Because #3 defines what's in #2.

Acting Chair Guillette clarified Mr. Frey's request. What you're talking about is a special exception for ArBnBs and adding in an AirBnB type rental definition. Guillette, a member of the zoning board, suggested having an additional review by someone who's not providing an AirBandB and wants to rent their home out through the AirBnB. He said, it would be another step to verify what purpose the house is being utilized for. You're talking about something that happened after the fact.

Ms. Hutchins asked what if an AirBnB (or associated companies) say fine -you allow Eastman people to rent their homes. Carol Shepherd, or any realtor in town, would say are you're helping them and taking away from me?

Mr. Frey said he didn't understand why the planning board initially voted for and recommended AirBnBs and now not recommending them. Mr. James stated we had a month to think about it.

Mr. Ed MacNeill (a licensed real estate broker) said if you look up Home Away (a vacation home rental by owner) in Grantham you will see a list of people who are renting their homes privately and not through a real estate broker. He noted that cities are different. It's the hotel operators who normally complain about this issue because you're taking business away (not a concern in Grantham). I'm not sure if it's a problem. He added companies (like Home Away) are required to have a State room and meals tax license. That's how the State knows how much revenue they're collecting. I don't think AirBnBs will come into Grantham, but if they do – I would have the same objections I just outlined.

Mr. Brown mentioned that the City of Laconia, (like many vacation areas) is regulating AirBnBs. They define it as a short-term rental in its ordinance. Having that defined is clearly important. The enforceability issue comes in – at the end of the day you have to decide if the available penalty is enough of a deterrent for people. If you go to court and try to enforce fines against somebody, you're going to have to establish how many days the violation occurred. He said it's more a resource allocation question- is it something the town wants to devote enforcement resources to? I don't have a problem having something like that in the zoning ordinance because it's a tool that can be useable, but I don't think it worth the town pursuing.

Mr. Robert MacNeil brought up a situation when problems arise with people who rented an AirBnB. The question becomes are you prosecuting the people who rented the home or the owner of the home? He added, having criteria in the permit or agreement provides control.

Mr. Brown noted that zoning ordinances will always be enforced against the homeowner. Laconia doesn't allow it in a residential district. People come in for a variance and then they grant it with conditions.

Mr. Frey decided to pull all three Amendment requests.

## **2. Site plan review #11-2018-02; Gray Ledges Condo Association– Proposed Old Brick Building Demo; M/L 232-001**

Acting chair Guillette said the agenda item will be taken up next month.

Acting chair Guillette asked Mr. Robert MacNeil about a conceptual. Mr. MacNeil said he would like to have a conversation and advice from the Board.

Representing Yankee Barn Realty Trust (165 Yankee Barn Road) Mr. MacNeil said when the Trust sold off the property they subdivided out the metal building and kept 130 acres. MacNeil said he and his wife (Patty) want to build a house and relocate (down-size), selling off their home on Howe Hill and live at 165 Yankee Barn Road. Mr. MacNeil said he has concerns about the 100-year flood plan. He mentioned the elevation (981) and the water issue and said he put an application into FEMA so he could fill 2 feet. Mr. MacNeil said the house in the overlay is only allowed a special exception if it's related to agriculture or commercial. He said he wanted to create a commercial entity so he could live there. He hopes to bring up the issue at next month's zoning board meeting and receive final notification at a public hearing in March. Mr. MacNeil said Mr. Conrad Frey suggested that he get a special exception for a single family dwelling. Mr. MacNeil would have to produce an agricultural- forestry product on the property. He said they are joining the New Hampshire-Vermont Christmas Tree Organization. MacNeil said he's also looking into a commercial fishing operation. He asked about the need to present the site plan to the planning board and that he would be going to the zoning board to get a special exception. Acting Chair Guillette said if he passed the hurdle of the zoning board, he could bring the site plan to the planning board and go through the proper procedures.

Mr. James asked about the conservation commission and the fish in the pond. Mr. MacNeil said he got a permit (regarding contamination) that was signed by the conservation commission.

Acting Chair Guillette added it was a special property and a good location.

Mr. James asked how far back he was going to put the house from the road. Mr. MacNeil replied 1,400 feet.

Ms. Pat MacNeil added how much her husband is looking forward to the work.

## **V. Correspondences**

Acting Chair Guillette acknowledged that the planning board received a correspondence from the Sullivan County Superior Court regarding the decision about Stocker Brook Realty (formerly Cote & Reney Lumber Co.).

Acting Chair Guillette also acknowledged an email from Linda Bohrer. Selectman Representative Jones said she has a lot of good suggestions regarding the flood plan, but they haven't met yet.

## **VI. Adjournment**

Acting Chair Guillette announced he would entertain a motion to adjourn the meeting. A motion to adjourn was made by Mr. Peter James and seconded by Ms. Hutchins.

**Unanimously Approved and Accepted (4-0).** The meeting adjourned at 7:55 pm.

The next Planning Board meeting will take place at 7:00 pm on Thursday, February 7, 2019, in the Jerry Whitney Memorial Conference Room at the Grantham Town Hall Building.

Respectfully Submitted,

Stuart Kaufman  
Planning Board Clerk