

TOWN OF CENTER HARBOR
PLANNING BOARD
Meeting
Tuesday, January 21, 2020
6 p.m.

Chair Charles Hanson called the meeting to order at 6:00 p.m. Board members present Secretary Bill Ricciardi, Members David Reilly, Kelli Kemery and Clerk Aimee Manfredi-Sanschagrin. Harry Viens, Peter Loudon, Mark Hildebrand, Winnifred Boynton and Rachel Xavier were absent. In the audience Code Enforcement Officer Ken Ballance and member of the public Don Covill.

Voting Members: Charles Hanson, David Reilly, Bill Ricciardi and Kelli Kemery

- I. **MINUTES:** Bill Ricciardi motions to approve the minutes of January 07, 2020 as presented. Seconded by Kelli Kemery. All were in favor the minutes pass unanimously.

II. **PUBLIC HEARING –CONTINUED FROM JANUARY 7, 2020 ZONING ORDINANCE CHANGES SECTIONS 6 AND 4**

Chairman re-opens the public hearing at 6:01 for the proposed ordinance changes to Sections 6 and 4.

Chair states at the last meeting the Board agreed to take another look at the proposed changes and decided to revert some of what was being proposed back to what currently exists. The Board will revisit this section again after Town Meeting. The Board believed further clarification is needed in Section 6:3:4. Based on some of the questions and concerns that were raised during the last hearing, the Chair requested the Clerk contact the NH Municipal Association (NHMA) for clarification specifically to the type of Ordinance the Town of Center Harbor adopted.

Chair continues, there are two types of zoning ordinances, one is permissive and one is prohibitory. The Town of Center Harbor functions under a “Permissive” Ordinance which means the Town, within its ordinance, tells you what you can do and if it is not listed than it’s not allowed. A prohibitive ordinance takes on a different approach which is it lists everything you cannot do so if it’s not listed then it is allowed. The majority of towns in the State of NH, particularly towns the size of ours, typically function under a permissive ordinance. Under permissive, if something is not allowed the mechanism the town has is to send the individual to the ZBA. Under prohibitory it would require a change to the ordinance. Kelli Kemery asks if every town has a ZBA. Chair responds no, not every town has a ZBA. Chair states if a town doesn’t have zoning, and asks the Code Enforcement Officer to correct if the information is inaccurate, they would not have a ZBA. Ken responds that is correct.

From our last hearing the only item we were left with changing was to prohibit the “feather flags/signs”. Chair had asked the Clerk to ask the question to the NHMA that if we have a permissive ordinance and then add a sign as prohibited, does it then make that sign a pre-existing non-conforming use. The NHMA encouraged the town not to add this type of sign or flag to the list. By adding it to the list of prohibited signs it would indicate those signs/flags were allowed before and now they are not. Any in existence before the change the town could be challenged or put in a weaker position on enforcing the removal of those flags/signs from a property. The Selectmen sent the businesses a letter this summer regarding signage issues so at least the town can show they were trying to address compliancy issues/concerns.

Kelli Kemery, so what tool would a town use to prohibit such signs? Chair, they were already prohibited by the type of ordinance we have. Ken Ballance, if it doesn’t say you can have that type of

sign then you can't. Our ordinance is very specific to what you can have anything outside of that is not allowed and requires enforcement. Ken continues, theoretically, the feather flags/signs could be considered into the sign calculation. Kelli Kemery, so how is a feather sign not conforming? Chair, because we don't say that type of sign is allowed. Our ordinance says you can have an open flag with a specific size, outside signage with posts etc. Ken, we have very specific criteria for what signs you can have, whether you call them a feather flag or just a flag we are specific to the type of "flag" you can have which is a 3' x 5' OPEN flag. We don't allow any other type of flag with the exception of those we can't do anything about like the American Flag, P.O.W. Flag and State Flag. Ken continues, if we want to look at an option that would have the least resistance, we could say we don't like those flags but if you have them out there they shall be calculated into the total signage a business is allowed, so if you're over that what does the business remove a sign on their building or the feather flag. Chair, first I would make a motion to remove feather flags from Section 6:6 and does everyone understand why? Board confirms. The only change will be for 4:4:6:1:8 to allow the OPEN flag for home occupation and under 6:3:4 we changed the last word in that sentence from Building to Business.

The Board is discusses which "business" needed to be adjusted, the Clerk's records show the words "per business" under the Total Square Footage table was the only adjustment to that section and that the last word in the sentence under 6:3:4 was to remain "Business" changed from "Building" as decided at the December 2019 meeting.

Question was asked if we should look at other towns and what they have for a sign ordinance. Ken Ballance states our ordinance is pretty extensive and there are others out there that are close but we are strict. Ken continues, we are dealing with what is a sign, what's not a sign, as time goes on, we will have new challenges. We were trying to just bring the businesses into compliance, I don't enforce the ordinance the Selectmen do. I handle compliance with ordinances. Kelli Kemery, so we ultimately will have a list of people that are still not compliant? Ken Ballance, for some reason that list that went to the Selectmen has not hit my desk so I don't really know. Bill Ricciardi, have you noticed any change in the signage meaning has there been any reduction? Ken responds no.

Chair, so to be clear the only item we are going to change in the entirety is to leave the word business as the last word of the first sentence under Section 6:3:4 we are going to deleted feather signs/flags from Section 6:6 and we are leaving the allowance of "one (1) 3' x 5' OPEN flag" under 4:4:6:1:8.

Motion: Chair motions the following changes, Section 6:3:4 to change the last word in the first sentence from building to business. Under 6:6 delete feather flag/signs. Under 4:4:6:1 to allow one (1) 3' x 5' OPEN flag. Seconded by Bill Ricciardi.

Kelli Kemery asks one additional question referring to her notes from the public hearings held over the summer. This change from building to business in the first sentence we are sure about that, clerk states that was a change made early on and was voted on in December. Chair states that may have been done prior to or during the summer. Kelli Kemery, it seems like Ken and Sheila were at odds you were saying business and Sheila was saying building. Clerk, states yes that's correct. Kelli, so she was saying building. Clerk, yes because Sheila and Ken do not agree on that.

All were in favor. Chair continues the hearing to January 28, 2020 @ 6 p.m. to approve the final document for Town Meeting.

PERMITS

None to review

III. OTHER

Ordinance Permissive v. Prohibitory: Chair states that based on the discussion surrounding the different types of Ordinances perhaps it would be beneficial to have an intro to our zoning ordinance. If people don't see that it's in the zoning ordinance, they just think they can do it. If we articulate with an introduction that summarizes the type of zoning ordinance the town has and how it works, we can avoid some of the issues we as the Board and the Town have encountered.

Ken Ballance, I just want to add something to a comment that was made earlier on information that was obtained by the NHMA about if something is not enforced for a period of time it then becomes allowed as a non-conforming use. Anything that existed prior to zoning being established would be allowed as a non-confirming use. In a case of permissive town, if it doesn't state it then it's not allowed and if was done no matter how long it's been there, if it was illegal then it's illegal now. There would be no grandfathering, this ordinance was established in 1969 so if it existed before then it's a pre-existing non-conforming use. If it's something that happened after the ordinance was voted in even if it's been there since 1983 and it's illegal by way of our ordinance, it is still illegal. Our zoning ordinance follows the Town of Milford's. Bill Ricciardi, and they started out as a permissive ordinance? Ken Ballance, no they started out as prohibitive and found out quickly that was not the way to go and changed to permissive. The Town of Center Harbor followed that. Moultonborough may have also started as prohibited and quickly changed. If we function under prohibitive and it's something that was not on the list they would be able to do it which means I could get a building permit in to build a marina here in down town and there is nothing we the town could do about it. We could add it to the list of things that are not allowed at the next town meeting but that request, if submitted before the change was made which is only once a year, would be allowed. Bill Ricciardi, I think by putting a summary on the cover of what type of ordinance the town functions under would be useful information. Chair, just paying attention rather than running off and doing something without questioning it. Chair, this is something we can just draft up and have it added to the cover of our ordinance. Ken states the information could also be added to the building permit.

Chair, one other thing we talked about with these multi business buildings, if we have any new ones coming in we should make it a requirement they have to come in for site plan review. Bill Ricciardi, I think that's a great idea. Kelli Kemery, how would they know they are required to do that? Chair, because if someone were to propose something by taking perhaps a building out on rte. 3 and they wanted to split it up into multi-tenant space you need to come in for site plan review. Bill, so when someone is thinking about doing something of that magnitude, they will either come in to see Ken for a building permit or they just inquire at the office they would be told this may be a requirement. Kelli Kemery asks Ken how many building permits come in that he denies? Ken said about 18-20% just because it's something that requires ZBA approval. Ken continues, the easiest avenue to get someone to the ZBA is by submitting a building permit which I deny and then that gives them a direct route to the ZBA. This is a procedural change the PB made about 5 years ago removing the requirement to go to the PB first in order to be denied and sent to the ZBA. Ken, which brings me to one we may have coming in which is a request to put in a veteran's home but label it as a rooming house. Veterans housing, we allow rooming house but we would need to determine if veterans housing would fall under that criteria. Chair, this goes to the permissive ordinance, it might not be explicitly state that it's allowed but it is ancillary enough to something that is allowed like Ken mentioned, a rooming house, would veterans housing fit that. That is where a Board would have to make that decision.

Chair, I think it might be prudent to go to the Selectmen and let them know what we are doing with this. They are the ones who requested we look at it again and let them know where we are with it. Also, let them know we have this permissive ordinance and we have received some legal feedback from the NHMA which is by not enforcing it's not a good position to put the town in. I have a time slot with them for tomorrow but wanted to discuss with the Board too if this is something we are all in agreement with. Board agrees for the Chair to update the Board of Selectmen at their January 22nd meeting.

New Appointment to PB:

Don Covill expressed interest in serving on the Planning Board as an alternate. Don was in attendance for the hearing. Chair asks Don to confirm he would like to serve. Don agrees. Chair asks the Clerk to submit a request to the Board of Selectmen to appoint Don Covill as an alternate member for a 3-year term. Clerk will submit the request.

IV. ADJOURNMENT

Meeting adjourned at 6:38 p.m. Next meeting scheduled for January 28, 2020 @ 6:00p.m. Respectfully submitted by Aimee Manfredi-Sanschagrín.

*****Because the Board has had multiple meetings in a row for the month of January, the Board will push its February meeting from the first Tuesday, February 4th to the Third Tuesday, February 18th at 6 p.m.**