

**Town of Kennebunk
Planning Board
Meeting Minutes
Monday, July 11, 2016**

Present: Chris MacClinchy – Chair, Richard Smith – Vice-Chair, Robert Metcalf, Matthew Randall, Janice Vance – Alternate

Not Present: David Smith – Secretary

Also Attending: Judy Bernstein – Town Planner

1. Open Meeting

C. MacClinchy opened the meeting at 7:04 pm. Today is Monday, July 11, 2016.

2. Approval of Minutes of Previous Meetings

Review and approval of minutes was held until the end of the meeting.

3. Public Hearing on Proposed Amendment to Zoning Article 10, Section 18 regarding Keeping of Horses

J. Bernstein summarized this proposal. The existing keeping of horses standard has been amended over the years, and part of these amendments was the addition of the rural zones within the standard. These were originally Farm and Forest zones. However, when these zones were added, they did not take into consideration the fact that the rural zones have much larger lot sizes. Also, it wasn't considered that the keeping of horses is much more likely within rural zones than in the residential zones.

Currently, the standard allows for the keeping of a single horse or pony on a lot with 2 acres of fenced area. The property owner can add 1 horse or pony for each additional ½ acre, with a maximum of 4 horses or ponies. The amendment would remove this maximum of 4 from the rural zones. This would mean that within the higher density zones, there would still be a maximum of 4 horses or ponies on a lot, but in the rural zones there is no maximum for the number of horses and ponies, provided that the lot

meets the rest of the standards for an adequate acreage of land set aside for the fenced area.

J. Bernstein stated that this is really a fairly simple amendment. She continued that she knows that in the rural zone off of Alewife Rd. there is a horse farm going in on a good sized lot, so they will be able to accommodate more than 4 horses.

C. MacClinchy pointed out that Suburban Residential is listed in the first paragraph of this standard, but not the second paragraph. Would this be considered a substantial change to include it, or can that be part of this amendment process?

J. Bernstein answered that she believes that this is a typo, and would not be considered a substantial change. She also noted that not included within this standard is the Rural Protection Zone. This is mostly protected wetland and 100 year flood, so she felt that it was reasonable to prohibit the keeping of horses in this zone.

C. MacClinchy asked if there were any questions from the Board regarding this amendment.

The Board had no questions at this time.

C. MacClinchy opened up the Public Hearing portion of this meeting to discuss the Keeping of Horses standard.

There was no one from the public in attendance, so the Public Hearing was closed.

C. MacClinchy asked for any additional questions or comments from the Board.

R. Metcalf stated that in terms of adding Suburban Residential, he agreed that this is not a substantive change, and so they should be able to do so.

C. MacClinchy made J. Vance a voting member of the board for the duration of this meeting.

R. Metcalf moved to pass this amendment to the standard for the Keeping of Horses on to the Board of Selectman with a positive recommendation.

J. Vance seconded the motion.

Vote was 5/0 in favor.

J. Bernstein will pass this proposed amendment and the recommendation from the Planning Board on to the Board of Selectmen.

4. Continued Review and Discussion of the Zoning Amendment Request by Paul and Betsy Antonellis regarding Increasing the Number of Rental Rooms permitted for B&Bs located in the Village Residential

J. Bernstein summarized this request. As the Board will recall, Mr. and Mrs. Antonellis attended the last meeting to request an amendment to the Village Residential Zone. She has provided a copy of their request, as well as a copy of a letter of support from the Chamber of Commerce within the Board's packets.

This request is to increase the number of allowed rented rooms from 4 to 6 in B&Bs within the Village Residential zone. This is basically the same request that was proposed and approved by this Board for the Suburban Residential zone earlier this spring. During the last meeting, the Board had requested some additional information, which she has attempted to pull together for them tonight. Included within the Board's packets is a list of the B&Bs in Kennebunk, as pulled from the Assessor's database. J. Bernstein noted she isn't certain that is a complete list, but she found 9 within the database. Also included within the packets is a copy of the zoning map with bullets to show the rough location of the B&Bs.

R. Metcalf asked if all 9 of these are located within Suburban Residential.

J. Bernstein answered no. There appears to be only 1 in Village Residential; The Elizabeth Rose House owned by Mr. and Mrs. Antonellis. She continued that it looks like there are 4 in Suburban Residential.

R. Metcalf asked if the rest are in Lower Village, with 1 in Coastal.

J. Bernstein stated yes, that is pretty accurate.

M. Randall asked about the B&Bs in the Lower Village district. Have they weighed in on this matter yet?

J. Bernstein answered they have not. She said she doesn't know the current limit for the Lower Village Business district yet, they may be allowed up to 8 rooms already. Also, inns are allowed within the Lower Village Business district. We don't allow inns in Village Residential or West Kennebunk Village.

M. Randall asked if he was right in believing that there is only 1 business that will be effected by this request.

J. Bernstein answered yes, at this time there is only 1 B&B. However, new B&Bs could come in. She continued she doesn't know if this change will encourage new businesses to set up in the Village.

J. Bernstein continued that she has included the standards for Renting of Rooms within the Board's packets. She would also like to propose an amendment to make it easier to find the standards for B&Bs.

J. Bernstein also noted that the proposal to increase the allowed number of rooms to 6 is because the 4 room limit makes it very difficult for a B&B to stay in business.

M. Randall stated that his concern is how other people will use this. He recalled that R. Smith expressed concern during the last amendment discussion about businesses popping up on Summer St. Also, the Board was concerned about parking on lot lines, and the impact on neighboring lots.

J. Bernstein reminded the Board that in order to establish a B&B, the property owners will need to show that they have adequate parking, which meets Town standards. That would require that they have enough spaces for each room, plus room to move so that no guest needs to back into the street. The property owners will also need to show that they have adequate septic and water for the number of rooms they are proposing to have for rent. All of this is part of the standards. Any application for a B&B will need to show that they can meet these standards.

R. Smith asked if the Board would allow any waivers of these standards.

J. Bernstein answered no. If any applicant wanted to waive any of these, they would need to apply for a variance from the Site Review Board.

R. Smith asked what they would need to do to get a variance.

J. Bernstein answered that an applicant would need to go to the Zoning Board and show hardship. Part of the ordinance for proving hardship is that the property owner cannot have made a change which causes the hardship. Therefore, changing your property into a B&B is a voluntary change, and would not be considered a reason to claim hardship for a variance.

R. Smith stated that this is primarily a residential area, and it would be good to protect the residential nature of the zone.

J. Bernstein stated she isn't sure if the Board knew where the existing B&Bs are located within town. They are currently very unnoticeable. She thought it would be a simple change to add a couple of rooms.

R. Smith noted that more rooms for rent means more commercial the area becomes.

J. Bernstein read the Hardship Variance requirements which states that the applicant must show the 4 elements of Undue Hardship:

- That land in questions cannot yield a reasonable return unless a variance is granted.
- That the need for a variance is due to unique circumstances of the property and not the general conditions of the neighborhood.
- That the granting of the variance will not alter the essential character of the locality.
- The hardship is not the result of action taken by the applicant or prior owner.

So for all intents and purposes, the last piece of the requirement would be very hard to meet for anyone proposing to change from 4 to 6 rented rooms.

C. MacClinchy noted that the variance would likely be looking for parking availability, but not looking to go from 4 to 6 rooms within an existing B&B. However, if they are changing to become a B&B, that is creating their own hardship, which won't be allowable in terms of a variance.

J. Vance noted that there is a whole section for Renting of Rooms, and B&Bs are listed under that. Why isn't there a section specific to B&Bs?

J. Bernstein answered that she doesn't think that it was ever discussed as such.

R. Metcalf noted that he recalls something from about 30 years ago, when someone wanted to add B&Bs into the ordinance. It was just added into the Renting of Rooms section.

J. Vance asked if the Board would want to consider having this as a separate section. Under this current standard, it appears that anyone who has an extra room can rent it out.

J. Bernstein agreed, the renting of a single room within a residence would fall under this standard.

J. Vance asked if the home owner would need to be a business to rent a room, as a B&B needs to be listed as a business.

J. Bernstein answered no, but they would need to meet all the standards for parking and utilities.

J. Vance asked if it is clear that a person wanting to rent a room out of their house. What about Airbnb?

J. Bernstein replied that we don't regulate Airbnb stuff. We have land uses for a single family home, B&B where someone lives there and rents rooms.

J. Vance asked if this is clear in how the ordinance is laid out.

J. Bernstein responded that this is why they are suggesting that the Board schedule a Public Hearing on this matter. She continued that she is also proposing an amendment to the language of the standard to make it clearer.

C. MacClinchy asked if the ordinance covers anyone in town who wants to get a roommate.

J. Bernstein reread the definition of Renting of Rooms; "the provision of rooms for rent in a building of residential character which is used principally as a one-family dwelling, in which the family or person living permanently in the home acts as proprietor and in which meals may be taken."

M. Randall asked if hiring a live-in nanny would fall under this ordinance. He clarified that it would seem that the way the language is laid out, the renting of rooms would have to be along the lines of a B&B, even if it isn't a business.

C. MacClinchy asked if the Board could think of examples that are not B&Bs.

J. Bernstein asked if they would just like to change the terms in the ordinance so that it read Bed and Breakfast instead of Renting of Rooms.

C. MacClinchy asked if a Boarding House would be covered by this standard.

J. Bernstein answered yes. Some of the places on the list she had provided fall under the category of Boarding House. They are listed down on Western Ave, but they have been there for quite a while.

She continued that in the proposed amendment she has provided she tried to address the very issue that was just raised by the Board. She added that they would add language that for an Inn or other lodging (i.e. Motel, Hotel, Inn, etc.) they would need to make sure that there is an apartment or residence for someone in charge of managing the place on site. This is a performance standard. The revised Section 17, which she had given to the Board, now includes a performance standard for lodging, furnishing of board/ B&B. She then asked if the Board would want to expand the list of categories. Do you want to change the definition of lodging?

J. Vance responded that what makes sense to her is to have a separate section for B&Bs under the Lodging ordinance.

J. Bernstein noted that according to Town of Kennebunk standards, all Renting of Rooms and Furnishing of Board are considered to be the same. She continued that she sees B&Bs and Renting of Rooms to be the same thing.

M. Randall asked if the Board has ever looked into what are the State requirements.

Didn't the Board hear that over 4 rooms for rent required a business to have a license?

R. Metcalf responded that he thought it was 8 rooms.

J. Bernstein replied that her understanding is that anything 5 or more rooms for rent require a sprinkler system. That will be an expensive renovation.

M. Randall asked if a B&B has more rooms than they are renting, do they need to designate which rooms are available. Or is this referring to the number of rooms allowed to be rented at a time.

J. Bernstein stated that if they want to rent 6 rooms, they have to meet that code.

C. MacClinchy noted that the Elizabeth Rose already has 6 rooms, and meets standards including sprinklers, they just want permission to use all 6 rooms.

Also, if you are in the Historic District, and don't have the parking for the additional rooms, an applicant will need to go through Historic Preservation to get approval to any changes to parking or anything else outside of the building. He continued that the Board is pretty covered in terms of limiting the number of people who would want to turn their home into a B&B. There are a number of standards and requirements which are not small hurdles to getting approval.

J. Vance stated that she is OK with the change. She was looking at the zones and the fact is that there are properties out in the rural zones which would meet the standards for parking, etc. She wanted to know if it would be a good idea to add Rural Conservation and Rural Residential to this amendment, as they could likely support a B&B. She continued that she didn't know if Branch Brook would make sense, she doesn't know enough about that zone.

J. Bernstein answered that there are probably not as many possibilities in Branch Brook. She also noted that the septic systems won't likely support this. The Rural zones would be the most logical places to allow up to 6 rooms. She asked if the Board would like to add the RC and RR zones to this proposed amendment.

M. Randall answered that he assumed yes, unless the Board wanted to keep the formal B&Bs in-town. He noted that they don't seem to be popping up in great volume where they would need to be corralled.

J. Bernstein noted that there are some rural areas which are still within walking distance from the Village growth areas.

R. Metcalf noted that he has stayed in B&Bs which are not within walking distance from any town.

J. Bernstein also noted that with the Eastern Trail out in those zones, a B&B in the rural sections of town could be in demand from hikers and bikers.

R. Metcalf stated that if the Board is going to add just 2 rooms to those zones, he doesn't think that it seems like a substantive change.

M. Randall stated that he thought the state requirement for a sprinkler system when 5 or more rooms are being rented would be a greater issue for new B&Bs than any of the standards in the Town's ordinance.

R. Metcalf reminded the Board that the concern which was raised by R. Smith in previous meetings would be about the fact that there is nothing in the standards which would prevent parking up against the property line. This is a concern for protecting neighboring residential properties. He suggested that the Board look into requiring some buffer between parking and abutting lots.

M. Randall noted that there are buffer requirements for hotels and motels, but not for inns (which can have up to 20 rooms) or B&Bs. He suggested that the Board instill the buffer requirement when an establishment reaches a certain number of rooms for rent.

R. Metcalf noted that he was just raising the question, as this was a concern the last time the Board had this conversation. In these other zones, there is the potential to have parking put right on the property line without a setback or buffer requirement.

J. Bernstein suggested that before the Board gets to the additional amendments, could the Board look at the amendment which was requested which will need to be scheduled for a Public Hearing. The requested amendment will change the Village Residential zone to increase the allowed number of rented rooms from 4 to 6. That is the only change being requested. The additional language changes are being proposed by J. Bernstein as these articles are all listed differently and she was looking to put them in a more consistent order.

M. Randall asked if the Board wanted to include RC and RR in this change of maximum allowable rooms.

J. Bernstein answered that she wasn't sure the Board will have time for all of that.

R. Metcalf asked what the timeline is if they are looking to get this to a Town Meeting for November.

J. Bernstein replied that there would need to be a Public Hearing during the first meeting of August.

R. Metcalf stated that he saw no problem in including RC and RR in this amendment.

J. Bernstein stated that she will include RC and RR zones in the amendment to increase the number of allowable rented rooms from 4 to 6.

C. MacClinchy asked if the Board would like to put the additional changes proposed by the Town Planner in for a Public Hearing.

J. Bernstein noted that it sounds as though the Board is looking for additional changes and more information, so they wouldn't be able to have that change ready for November.

R. Smith stated that he is not in favor of this amendment to the number of allowable rooms. He feels that this hasn't been vetted enough, and that the Board is rushing into the change for 1 property.

R. Metcalf asked if he is also opposed to adding RR and RC to the change.

R. Smith answered yes, he also opposed that amendment.

R. Metcalf stated that he doesn't see this as a major issue in town. He doesn't believe that a lot of people will want to take advantage of this change, as B&Bs are a lot of work. Also, if going over the 4 room limit, there is a large monetary investment required to install the sprinkler systems. However, he added, the rest of the Renting of Rooms standard needs further discussion.

C. MacClinchy agreed that this looked like a reasonable change to the ordinance.

M. Randall stated that he thinks this is a good change. This is a good way to help restore some of the historic houses. And it is unlikely to create such a landslide of applications that it would cause a large problem for the Town. He continued that he would also like to include the two rural zones as this change would be good for the whole town and not just the downtown area.

C. MacClinchy noted that Upper Square also only allows for 4 rented rooms. Would the Board like to make that change?

M. Randall asked about Upper Square, and it was determined by the Board that Upper Square doesn't need to change as they wouldn't be able to meet the parking standard for additional rooms.

J. Vance stated that she is in favor of increasing the allowable number of rented rooms in all three proposed zones.

C. MacClinchy stated that he would like to schedule a Public Hearing for August 8th to address the increase of rented rooms in RC, RR, and VR. He also suggested adding the Town Planners suggested reorganization of the standards be included.

J. Bernstein asked if he would like to have it all done on the same night.

C. MacClinchy answered yes. He said he hopes that the Board of Selectmen will include all of these suggested amendments as the same [in 1 warrant article].

J. Bernstein stated she will make the schedule.

5. Other Old/ New Business

Meeting Minutes:

Minutes for 5/9/16 were reviewed and corrected.

R. Metcalf moved to approve as corrected.

R. Smith seconded the motion.

Vote 5/0 in favor.

Minutes for 5/23/16 were reviewed and corrected.

R. Metcalf moved to approve as corrected.

J. Vance seconded the motion

C. MacClinchy noted that both R. Smith and M. Randall were absent from this meeting.

Vote was 3 in favor/ 2 abstain.

Minutes for 6/27/16 were reviewed and corrected.

R. Metcalf moved to approve as corrected.

R. Smith seconded the motion.

Vote was 4 in favor/ 1 abstain (M. Randall).

Upcoming Agendas:

July 25, 2016 agenda

- *Sketch plan for LEB subdivision on Ross Rd.* They have a new plan with a corner piece that has been removed. This change makes them now more than 1500' from sewer, which removes the requirement to link into public sewer. They have filed the sketch plan, but are asking for both sketch and preliminary approval at the same time.
 - C. MacClinchy asked if this plan could be reviewed with the Town Attorney. R. Metcalf agreed, as it seems clear that they amended the application just to circumnavigate the requirements of the zone.
- *Gilpatric application on Western Ave.* The applicant has provided a very crude sketch reflecting what was asked at the site walk. He is extending the length a little bit and add another culvert. J. Bernstein will ask them for more details, so she doesn't know if they will be ready for the 7/25/16 meeting. Does the Board want to schedule this without having the more detailed materials?
- *Shoreland Zone on Erinmore.* They had indicated that they had more details which hadn't come up. Don't know if they will be ready to present that dock, which will be a Special Exception, and will need a Public Hearing. J. Bernstein noted that she doesn't believe they are in a great hurry for that application as they have a lot of construction on that site.
- *Bayberry Ave.* J. Bernstein has all the application materials on this now.

August 8, 2016 agenda:

- Public Hearing for proposed amendment to Renting of Rooms standard in VR, RR, and RC
- J. Bernstein noted that she would like to have more clarity on the cluster plan subdivision standards. This is both part of the zoning under Open Space standards and the Subdivision Standards. She stated that she thinks will need to look into both.
- C. MacClinchy asked if the Board would like to revisit the discussion on drive-thrus and accessory use. He wasn't sure where they left on that.
 - J. Bernstein stated the discussion was regarding principle use being sit-down v. drive-thru use. The Board could require a minimum number of

seats within a restaurant in order for the sit-down to be the primary use. Possibly require a certain number of seats available for the expected queue in the drive-thru.

- o C. MacClinchy stated that his concern is having them on the corner of intersections.
- o R. Metcalf stated that he believes the Board will need to relook at this, but he isn't sure if they will be ready to do so next month.

J. Bernstein stated that she will be sending a reminder on Thursday (7/14/16) of the 2 sitewalks scheduled to happen on Monday (7/18/16).

6. Adjournment

R. Metcalf moved to adjourn.

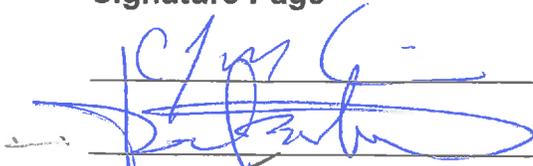
R. Smith seconded the motion.

Vote was 5/0 in favor.

Meeting was adjourned at 9:27 pm.

Respectfully submitted by Lynne Capitan.

Signature Page





8/8/16
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Signature

Date