

TOWN OF BEDFORD
September 26, 2022
PLANNING BOARD WORKSHOP
MINUTES

A workshop meeting of the Bedford Planning Board was held on Monday, September 26, 2022, at the Bedford Meeting Room, 10 Meeting House Road, Bedford, NH. Present were: Charlie Fairman (Chair), Town Councilor Chris Bandazian (Town Council Alternate), Matt Nichols, Hal Newberry, Steve Clough, Matt Sullivan, John Quintal (Alternate), Chris Swiniarski (Alternate), John Nelson (Alternate), Jillian Harris (Assistant Planning Director), and Becky Hebert (Planning Director)

I. Call to Order and Roll Call:

Chair Fairman called the workshop meeting to order at 7:00 p.m.

II. New Business:

The Bedford Planning Board held an informal workshop to discuss general community planning issues and Planning Board procedures. Topics included, but were not limited to the following:

➤ **Agricultural Uses and the Keeping of Chickens**

Dennis Tokac, 12 Butterfield Lane, spoke to the Board about a proposed Zoning Amendment for agricultural livestock and poultry and the keeping of chickens. He would like the Board to consider a restriction on the size of a coop and a prohibition on roosters. Mr. Tokac explained that he and his family members work from home and have been experiencing nuisance noise from neighboring roosters and it is decreasing his property value and detracting from their quality of life. Mr. Tokac went on to explain that proximity to the noise from his property is an issue in their development and the Board could consider a prohibition within a certain proximity to nearby properties. Mr. Tokac has discussed the issue with his neighbors, animal control and made reports to the police department, but the problem persists. Mr. Tokac explained that there are restrictive covenants for his subdivision, but they are not enforceable by the Town or the Police Department. He has conducted some research and there are towns that have restrictions on chickens and roosters, including Goffstown, where they prohibit roosters in certain districts. Derry has certain restrictions as well and also Manchester and Londonderry. These are just some examples where there are zoning restrictions in place.

Ms. Hebert explained the Planning Board's role and the Zoning Amendment schedule. Chair Fairman stated that even if the Board made a zoning change it may not alleviate Mr. Tokac's current situation because it could be grandfathered. Mr. Bandazian stated that he looked at the covenants for this development after Mr. Tokac's visit to the Town Council and he listed the restrictions that could cover this type of nuisance. Mr. Bandazian stated he could possibly argue

that his private rights are being infringed upon if he were to pursue the enforcement of the restrictive covenants. His other suggestion was to propose a discussion of a nuisance ordinance with the Town Council that would cover this type of nuisance and others.

The Board suggested that Mr. Tokac conduct more research and they could discuss this topic further at a future meeting.

➤ **HB 1661 and HB 1021 Overview**

Ms. Hebert gave an overview of HB 1021 Exemption for Religious Uses. This past legislative session HB 1021 was approved and significantly changed how municipalities may permit new development related to religious uses. HB 1021 added a new section to RSA 674, called Religious Use of Land and Structures. The new law exempts land or structures that are primarily used for religious purposes from site plan review and zoning. However state and federal regulations are still enforceable including ADA requirements as well as the state fire and building codes. New Hampshire Planning Boards may require a limited site plan review for dimensional requirements including building height, setbacks, lot area and building coverage, as long as these standards also apply to non-religious uses and do not overly burden the religious use. The typical aspects of a site plan application including architectural design, stormwater treatment, traffic, lighting, utilities, signage, landscaping and parking are no longer applicable to religious uses. Staff will be working with the town attorney to develop an affidavit that a religious use would need sign to establish their status as a qualifying religious use and the Town's acknowledgement of the exemption. The law went into effect on July 1, 2022.

The Board discussed where the exemption would be applicable in Bedford, including current religious uses. Mr. Sullivan asked if they could put up big lights and a giant parking lot without any review? Ms. Hebert stated that it was her understanding that they could under this new exemption. The Board discussed how this could be problematic if the religious use ceases and could the town require the development to be taken down? A change of use would require the site to come under site plan review with the Board. This is a new law and it will be interesting to see how it plays out. The Board questioned whether signage would be grandfathered in and that this could lead to a lot of possible litigation. New construction and alterations would still need to go through the building permit process and meet state fire codes.

Ms. Hebert gave an overview of HB 1661 Housing Incentives. HB 1661 also known as the "housing bill" was recently signed into law. The bill includes a series of changes to how New Hampshire's land use boards review and process applications. The Housing Working Group discussed the procedural changes at the September 12 meeting. The bill also included the following incentives for workforce housing:

- Acquisition of Land for Workforce Housing and creation of Housing TIF Districts – Provides for the acquisition of land by municipalities for workforce housing, by expanding the definition of "public use" under RSA 162-K, allowing for the creation of TIF Districts for workforce housing developments. However, land may not be taken by eminent domain for the construction of workforce housing units. This took effect on August 23, 2022.

- Elderly Housing Incentives will apply to Workforce Housing – Any zoning incentives for elderly housing including density, location, dimensional standards, etc. will automatically apply to workforce housing developments. The change goes into effect on July 1, 2023. The Planning Board will need to include any proposed zoning amendments in response to this housing incentive on the March 2023 ballot.

Review of Zoning for Elderly Housing

Staff has completed a comparison of the zoning for elderly versus workforce housing to review potential impacts of HB 1661 which make the incentives for elderly housing interchangeable with workforce. Elderly housing is permitted in AR, CO, CO-2, OF and SI Zones. The use is also allowed in the RA & GR Zones, provided the development is part of a cluster residential subdivision. Alternatively, the workforce housing use is permitted in the CO-2, PZ and SI Zones and in the RA & GR Zones provided the units are ownership housing in buildings with not more than four attached units. The setbacks, tract size, frontage, building height and green space requirements are the same for both elderly and workforce housing. The density for elderly housing is 28 units per acre whereas the density for workforce is 12 units per acre of net developable land. The workforce housing use also limits the number of units per building to not more than 12 units for multifamily developments. Workforce and elderly housing development need to be connected to public water and sewer utilities, unless the units are part of a cluster residential subdivision for the elderly housing or constructed as ownership workforce units within the RA & GR Zones.

Both workforce and elderly housing require at least 25% of the units be set aside as affordable, but the affordability requirements are based on different housing income limits and definitions. The elderly affordable housing is intended for persons with a household income not exceeding 80% of the area median income (AMI) established by HUD for the Manchester metropolitan area. The workforce housing definition is consistent with state law. Rental housing is defined as a unit that has monthly rent not exceeding 30% of the gross income of a household earning no more than 60% of the median income for a three-person household for the Manchester, NH Fair Market Rent Area as published annually by HUD. The ownership unit is defined as housing that can be purchased at a price including the combination of mortgage loan debt service, property taxes and insurance, that does not exceed 30% of the gross income of a household earning no more than 100% of the median income for a four-person household for the Manchester, NH Fair Market Rent Area as published annually by HUD.

The location and density appear to be the most significant incentives for elderly housing that would potentially result in an unintended consequence if applied to workforce housing. Staff reviewed the density of existing multifamily developments to gain a better understanding of the densities for this housing type in Bedford. There are no housing projects that come close to having a density of 28 units per acre. The highest density is seen at the Chandler Apartment building which is 19 units per acre. Staff would recommend lowering this density to match the workforce density of 12 units per net developable acre.

Elderly housing is also more widely permitted throughout town, including the Commercial Zone. During the Master Plan process, the residents discussed where additional density is most

desirable and there was strong sentiment from the community that higher density housing should not be allowed along the Route 101 corridor. Staff would recommend removing elderly housing as a permitted use in the CO and CO-2 zones. Lastly, staff would recommend amending the definition of affordable housing to match the workforce housing definition. The Board may need to consider adjusting the household size, because elderly housing is typically intended for one or two person households.

The Board discussed bringing the incentives for both elderly housing and workforce housing into sync. Mr. Fairman suggested an average of 19-20 units per acre for both for density. He noted that the Chandler Apartment building density was high because the Board restricted the bedroom sizes for the development to mostly studio and 1-bedroom. He stated that the number of children in apartments is not high and this is mostly because of number of bedrooms for apartment buildings.

➤ **InvestNH Planning and Zoning Grant Programs**

Ms. Hebert discussed the InvestNH Planning and Zoning Grant Program. The Housing Working Group has discussed a two-phased approach for possible zoning amendments. This fall the Board will need to consider amendments in response to changes in state law regarding workforce and elderly housing. The group is also looking at a broader zoning analysis to review opportunities for and improving housing in Bedford, as the region and the state continue to work towards meeting the demand. At the September meeting, the group discussed the InvestNH Housing Opportunity Planning (HOP) Grant Program that could be used to conduct a regulatory audit and for new regulatory development for possible recommendations that come out of the audit.

As part of Governor Sununu's InvestNH initiative, \$5 million has been allocated to provide grants to municipalities to analyze and update their land use regulations to help increase housing development opportunities. New Hampshire Housing is administering this program and grants can be used for needs analysis and planning, regulatory audits and regulatory development. Staff is looking for feedback from the Board on interest in pursuing a regulatory audit and/or development of new zoning and at what scale the scope of the audit should be, if conducted. The scope could include a full-scale audit for housing opportunities in all zoning districts, or could be more focused on just workforce housing opportunities or on specific zoning districts.

The Board had a discussion on student ratios in apartments and the impact from workforce housing. Could there be some more information from the School Department on the student census that would help to inform the discussion? Ms. Hebert stated that the analysis was done as part of the fiscal impact statement for the Sebbins Brook Crossing development and on average, Bedford has 0.28 students per unit in multi-family apartment buildings. This type of analysis could be part of the audit conducted under the grant program. The Board would like to analyze housing data as part of the zoning grant program. The Board voiced support for pursuing the grant to conduct a full-scale audit of the zoning regulations and housing opportunities.

➤ **Potential Zoning Map Amendment**

Ms. Hebert outlined that the Planning Board has received a request for a zoning map amendment to change the zoning designation for the property at 54 Rundlett Hill Road (Lot 1-19) from Service Industrial (SI) to General Residential (GR). A letter from Attorney Donald Kennedy was shared with the Board. The property contains approximately 20 acres and is located on the periphery of the Service Industrial Zone. The lot has approximately 920 feet of frontage on Rundlett Hill Road and is directly across the street from seven houses in the GR Zone. The rear portion of the property contains wetlands and a utility easement bisects the lot. The land also slopes steeply downhill, away from Rundlett Hill Road. The most buildable area of the lot is at the northeastern corner of the property, closest to the General Residential Zone. The site also has access to municipal water but would need to be served by onsite septic. Given the topography and proximity of the lot to the existing residential properties on Rundlett Hill Road, staff would recommend supporting the rezoning request and including the map amendment with the Board's proposed zoning amendments in December.

The Board voiced support of the map amendment as it would be more compatible with the residential uses closest to the property. There is a natural buffer from the topography and wetlands to the industrial uses to the south.

Mr. Newberry asked if the landowner should take the initiative on the map amendment? Ms. Hebert stated that the property owner is asking the Board to sponsor the amendment as part of their zoning amendments proposed for the March town ballot. The Board had a discussion of whether they should sponsor the amendment or support it should the landowner submit a petition. The Board decided to discuss adding it to potential zoning amendments sponsored by the Board at a future meeting.

➤ **Discussion of Possible Zoning Amendments for 2022:**

Potential zoning amendments based on suggestions/requests of town staff and Planning Board members were discussed.

- The Board will further discuss amending the zoning incentives for elderly housing in response to HB 1661, including removing elderly housing as an allowed use in the CO & CO-2 Zones, reducing density from 28 units per acre and amending the affordability requirements to be consistent with workforce housing income limits.
- The Board will further discuss increasing the percent of required open space in cluster subdivisions from 25% to 33% or 40% to encourage protection of additional open space and clustering of residential lots.
- The Board will further discuss amending the Junkyard definition to take into account the storage of antique vehicles.

- The Board will further discuss amending the definition of a “structure” to clearly include portable storage units and to exempt play structures that are not permanently affixed to the ground.
- The Board will further discuss housekeeping amendments to the sign ordinance to correct typographical errors.

➤ **Any other topics or comments from Board members**

There were no other topics or comments from the Board members.

III. Adjournment:

MOTION by Mr. Swiniarski to adjourn at 9:00 p.m. Mr. Nichols duly seconded the motion. Vote taken – all in favor. Motion carried.

Respectfully submitted by
Jillian Harris