

Town of Bedford

Planning Board Minutes

October 24, 2022

A meeting of the Bedford Planning Board was held on Monday, October 24, 2022, at the Bedford Meeting Room, 10 Meeting House Road, Bedford, NH. Present were Charlie Fairman (Chair), Hal Newberry (Vice Chair), Matt Nichols (Secretary), Matt Sullivan, Phil Greazzo (Town Council), Chris Swiniarski (Alternate), Chris Bandazian (Town Council Alternate), John Nelson (Alternate) Jillian Harris (Assistant Planning Director), and Becky Hebert (Planning Director). Absent were Priscilla Malcolm and Steve Clough.

I. Call to Order and Roll Call:

Chairman Fairman called the meeting to order at 7:00 p.m. and appointed John Nelson and Chris Swiniarski to vote in the absence of members not present. Chair Fairman stated before we begin tonight's agenda, I want to congratulate Mr. Jeff Foote and the entire Bedford Department of Public Works on receiving full accreditation by the American Public Works Association. The accreditation process included five steps: self-assessment, application, improvement, valuation, and finally accreditation and took several years to complete.

We should all join Rick Sawyer when he stated, "I could not be prouder of the efforts over the past few years that the entire team has put into documenting, updating, and modernizing over 400 policies, practices, and procedures. The effort was truly a team effort."

The Bedford Department of Public Works is the first in New Hampshire to receive this prestigious accreditation and one of only 176 departments of public works nationwide. Again, congratulations to Mr. Jeff Foote and his entire team.

II. Old Business & Continued Hearings: None

III. New Business:

1. **Circle Drive Associates, LLC (Applicant & Owner)** - Request for a time extension approval for a previously approved Site Plan for a proposed residential development consisting of a 142-unit workforce housing development comprised of two four-story buildings, and a 96-unit elderly housing development (age 55 and over), comprised of one four-story building, and associated site improvements at South River Road across from Iron Horse Drive, Lots 35-98-5 and 35-98-40, Zoned PZ.
2. The Planning Board will hold a Public Hearing on proposed amendments to the Land Development Control Regulations, Article 217 and Article 316. The Board will also hold a public hearing on associated amendments to the Planning Board Rules of Procedure. The full text of the proposed revisions is available in the Planning Department office during normal business hours and on the Town website at www.bedfordnh.org.

Ms. Harris reviewed the agenda.

MOTION by Vice Chair Newberry to accept the agenda. Mr. Nichols seconded the motion. Vote taken – all in favor. Unanimous. Motion carried.

III. New Business:

- 1. Circle Drive Associates, LLC (Applicant & Owner) – Request for a time extension approval for a previously approved Site Plan for a proposed residential development consisting of a 142-unit workforce housing development comprised of two four-story buildings, and a 96-unit elderly housing development (age 55 and over), comprised of one four-story building, and associated site improvements at South River Road across from Iron Horse Drive, Lots 35-98-5 and 35-98-40, Zoned PZ.**

Atty. Jon Levenstein presented: Good evening, everybody. My name is Jon Levenstein. I'm an attorney in Bedford and I represent Circle Drive Associates. I'm here with Bob Smith, who's a member and manager of Circle Drive Associates, and has been the primary driving force behind this development since its beginning. They first came before the Board back in October of 2019. Since then, we've been before the Board a number of times. In October of 2020, the Site Plan was approved by the Planning Board and allows for the development of 142 condominium units of workforce housing and 96 units of elderly housing. During the past year since we've finished up completing the conditions of approval and since the Site Plan was signed, the owners of Circle Drive Associates have been on basically a twofold track as far as working to get this project built and developed. First fold was looking for somebody with experience in building and running this type of development, particularly the workforce housing portion, and secondly, was the possibility that they were going to build it themselves. However, as most of you know, or probably all of you know, the past year, the economic conditions for building anything has been very, very difficult with product being very expensive, inflation causing workers and basically the cost of building the unit during the past year has been prohibitive as far as finding a seller, and as far as developing it themselves.

The Land Development control regulations—I believe it's them—require that the owner pull a building permit within a year after getting their Site Plan signed off on. During this year, like I said, we've been trying to get the thing going under way. They've had a number of people from outside interested in buying it. However pretty much every case so far, they've run the numbers and they just can't make it work at this point in time. It's just too expensive and the government hasn't increased what you can get for the workforce housing. They're lagging behind. So, when you put the two together, it's just a project that we haven't been able to get off the ground because of the economic conditions. What we're looking to do today is just get that requirement that we pull the building permit within a year extended for an additional year so that we continue working on the path to getting this thing built. If you have any questions, I'm here. Bob is here, and we can hopefully answer them.

The Board does not have any questions of the applicant. There were no comments from the public. Vice Chair Newberry commented it's not unusual for the Board to grant an extension like this. Chair Fairman replied thank you. I think that we've done that several times over the time I've been on the Board. What is the pleasure of the Board?

MOTION: Mr. Sullivan moves that the Planning Board grant a one-year extension to provide an additional year for Circle Drive Associates, LLC to apply for a building permit for the proposed Sebbins Brook Crossing residential development off of South River Road Lots 35-98-40, 35-98-50 and 35-98-51, zone PZ, in accordance with the following findings of fact.:

- 1. The request is in compliance with the purpose and intent of the Bedford Land Development Control Regulations.**
- 2. The Board also includes all facts found in the meeting minutes for this application and incorporates all meeting minutes into this decision.**

This approval is granted subject to the following conditions

- 1. The Applicant shall obtain a building permit for the project by October 12, 2023.**
- 2. All conditions of the October 13, 2020 and October 25, 2021 Planning Board approvals shall remain in full effect.**

Vice Chair Newberry seconded the motion. Vote taken – all in favor. Unanimous. Motion carries.

- 2. The Planning Board will hold a Public Hearing on proposed amendments to the Land Development Control Regulations, Article 217 and Article 316. The Board will also hold a public hearing on associated amendments to the Planning Board Rules of Procedure. The full text of the proposed revisions is available in the Planning Department office during normal business hours and on the Town website at www.bedfordnh.org.**

Land Development Control Regulations:

Chairman Fairman stated the second item on the agenda is to hold a Public Hearing on the proposed amendments to the Land Development Control Regulations. Ms. Hebert, do we have a discussion, or shall I open the Public Hearing? Ms. Hebert replied I'll give you a quick introduction to this although we've talked about it a few on a few occasions. Tonight, you're holding a Public Hearing on proposed amendments to both the Land Development Control Regulations and your Planning Board Rules of Procedure. The amendments are attached to your staff report and the amendment to the Land Development Control Regulations reflects the elimination of what is known as the 90-day extension that was part of State law. Planning boards could request a 90-day extension beyond your 65-day clock to review and make a final decision on a planning board application and the Town Council could waive that 65-day clock if the Planning Board asked for an extension, and State law was recently changed to eliminate the option for the 90-day extension.

The new law does allow for the Board to deny any application that it feels is incomplete or not in compliance with your regulations without prejudice, and the applicant can now reapply for the substantially similar application which they could not do in the past. So, your Land Development Control Regulations have been amended to eliminate that 90-day extension, and also to include some language about the Town Council now has the ability if the Board does not act, to deny an application because it needs more information, and that 65-day clock runs out. The Town Council is now required to approve a

Planning Board application, because there is no longer this ability for the Council to grant the Board an extension.

In my history with Planning and with the Town of Bedford, we've never needed to exercise either an extension or a come across a time when we've had the clock for review expire because in most cases the applicant will willingly waive the 65-day clock to allow for continued discussion and deliberation on an application. But we do need to amend the Land Development Control Regulations to be consistent with State law. There were no questions from the Board on the amendment.

Ms. Hebert continued, the Rules of Procedure also have some language about the Board's timeline for review of applications and the Rules of Procedure include an amendment clarifying that the Board may now deny an application without prejudice during that 65-day review period if you find that the application is lacking sufficient information and the applicant would have the ability to reapply. I'm happy to answer any questions about either of the proposed amendments. The staff recommendation is that you adopt the proposed amendments as presented and written in your staff report.

Vice Chair Newberry asked as far as we can tell then, if the Board were to deny an application because of insufficient information, the applicant could reapply or resubmit that application, and that resets all the clocks. Ms. Hebert replied it does, yes.

Mr. Sullivan asked and there can be changes to that application as long as it's not a significant change, right? It has to be essentially the same application, just bringing more information to the table. Ms. Hebert replied sure. In the past there was something called the Fisher Doctrine, and they also explain it as saying the applicant has one bite at the apple. So, you can apply for an application, and—say the Board denies that application. The same is true with the Zoning Board. If the Zoning Board denies an application, the applicant can't continue to come back to the Board with the same application. Under this new State law, the Board can deny without prejudice, and the applicant can reapply for the same application. Hopefully they'll provide the information that the Board identifies as being lacking in that particular application.

Chair Fairman stated the difference is without prejudice. Ms. Hebert concurred, it's without prejudice, yes. Chair Fairman asked for a normal denial they can't come back? Ms. Hebert replied yes, normal denial with prejudice. If you come to review and a final decision on an application, the applicant can't reapply for the same application. If you deny it without prejudice, they can reapply.

Vice Chair Newberry stated if it were to come to executing a denial, part of that denial should be explicit on what information the Board is looking for that it doesn't have. Ms. Hebert replied yes. And this doesn't happen frequently in your review in our experience. But it is a new option for the Board as you take on the review on application. The applicant of course would have the option of waiving the 65-day clock and providing the information that the Board might find would be lacking, but if you feel like you're at a point where you're going to run out of that 65-day clock and the applicant is feeling very strong willed that they don't want to waive the timeline for review, this is a new tool or option for the Board's action on an application.

Mr. Nelson stated but the denial without prejudice, I'm assuming that's seldom, if ever, used with this Planning Board. Ms. Hebert replied it is a new option, but I have never seen the 65-day clock run up. Applicants have always willingly extended the 65-day clock if they run up to the 65-day clock. The way we do it, your applications will postpone to your next meeting and the applicant submits a written

request to staff explaining that they would like the application to be postponed, and that's their acknowledgement of the clock and the extension of the review and discussion.

Chairman Fairman stated that actually happens frequently. Ms. Hebert replied it does. Chair Fairman continued basically, the staff is working with them, has come to agreement that everything isn't ready and then they get postponed. Ms. Hebert replied yes.

There were no further questions or comments on the changes to the Land Development Control Regulations.

Chair Fairman asked Ms. Hebert would you like to discuss the changes to the Planning Board Rules of Procedure, or do you prefer to hold a Public Hearing on the other first? Ms. Hebert suggested why don't you vote on your Land Development Control Regulations and open the Public Hearing to see if anyone from the audience would like to speak?

Public Hearing on the amendment to the Land Development Control Regulations:

Chairman Fairman opened the Public Hearing on the changes as listed to the Land Development Control Regulations and asked for public comment.

Atty. Jon Levenstein commented: Jon Levenstein, 51 Powder Hill Road, Bedford. The only thing that came to my mind is that we've probably been lacking in the past as far as when something is continued at the hearing, and we haven't put down or haven't asked the applicant specifically whether they waive that time limit. And probably based on this new law, it probably would be good procedure to actually have a formal waiver of that. Chair Fairman replied when it happens in the meeting? Mr. Levenstein replied yes, exactly. Chair Fairman said good point. Thank you, Sir.

Ms. Hebert stated we can keep track of that on your staff report. We can let you know where you're at on that time timeframe as far as how many days you have left, and we can formalize that process. The stakes are a little bit higher. If the applicant doesn't willingly waive the 65-day clock, they can petition to Town Council to have the application automatically approved.

Vice Chair Newberry stated but that's only if the Board fails to reject the application without prejudice. Ms. Hebert said correct.

Mr. Levenstein said one other question. Ms. Hebert, does the Town Council have to accept it or can the Town Council say no, we're not going to accept the application? Ms. Hebert replied the Town Council has to approve the application. If the Board fails to deny it without prejudice and the applicant does not waive the clock. We've never seen that happen, but there is a pathway for concluding the review and finishing the review.

Mr. Greazzo asked why then would it have to go to the Town Council if it's automatically approved? It seems kind of pointless if it didn't get approved here and the clock ran out it's approved. Is that part of the State law also that it must go to the Town Council as the governing body? Ms. Hebert replied it is part of the State law. Chair Fairman added they can overrule the Planning Board.

Mr. Greazzo stated but if they have no choice whether to overrule the Planning Board, they really can't, so it seems poorly written. Chair Fairman said I was thinking the same thing. Mr. Bandazian said it's

also a power that's not in the Charter. Mr. Swiniarski said it also adds about 30 days to the process. We still have to get to the Town Council. Ms. Hebert replied right.

Mr. Greazzo asked another question—we don't have a choice whether we adopt these, then do we? Mr. Hebert replied no, they are reflecting the new State law. Mr. Greazzo continued so, we could take no action and it's still going to happen anyway? Ms. Hebert said yes. We prefer to keep our regulations up to date and current.

Vice Chair Newberry asked Mr. Chairman, do you want to take them separately, or do you want to take them all together? Chair Fairman replied I think we can do the Land Development Control Regulations. Then we'll talk about the changes to the Planning Board Rules of Procedure.

**MOTION: Vice Chair Newberry moves that the Planning Board adopt the proposed amendments to the Bedford Land Development Control Regulations, Article 217 and 316 as reviewed and discussed this evening. Mr. Nelson seconded the motion.
Vote taken – all in favor. Unanimous. Motion carried.**

Planning Board Rules of Procedure:

Chair Fairman requested Ms. Hebert review the change to the Planning Board Rules of Procedure. Ms. Hebert stated the change to Planning Board Rules of Procedure is an amendment to Section 7.7 under Decisions and it clarifies that if the Board determines it lacks sufficient information to make a final decision on an application and the applicant doesn't consent to an extension, the Board may deny the application without prejudice and the applicant can resubmit. It's a simple amendment, but we felt like it was important to clarify that in your Rules of Procedure.

Vice Chair Newberry asked so this change just keeps the Rules of Procedure in sync with the Land Development Control Regulations that we've just modified? Ms. Hebert replied yes. There were no questions from the Board.

Public Hearing on amendments to the Planning Board Rules of Procedure:

Chair Fairman opened the Public Hearing and asked if there were any comments from the public. There were none. The Public Hearing was closed.

**MOTION: Vice Chair Newberry moves that the Planning Board adopt the proposed amendment to the Planning Board Rules of Procedure as presented this evening to Section 7.7 of the Planning Board Rules of Procedure. Mr. Sullivan seconded the motion.
Vote taken – all in favor. Unanimous. Motion carried.**

IV. Concept Proposals and Other Business: None

V. Approval of Minutes of Previous Meetings (September 12, 2022 & September 26, 2022 Workshop)

MOTION: Mr. Nichols moves to approve the Planning Board minutes for September 12th and September 26th, 2022 as presented. Mr. Sullivan duly seconded the motion. Vote taken – all in favor. Vice Chair Newberry and Mr. Greazzo abstained. Motion carried.

VI. Communications to the Board: Ms. Hebert said I wanted to make an announcement. This Saturday, October 29th from 8:00 to 10:30, the Town Council is hosting a volunteer breakfast at the

Town Hall, and you should all have received an invitation to the volunteer breakfast. We also have your next meeting on November 7th. But we did not receive any new applications for your second November meeting. Given that it is Thanksgiving week, I wanted to ask the Board if you'd be interested in canceling that meeting. Chairman Fairman asked is anybody opposed to that? There were no oppositions. Ms. Hebert continued we have several applications for your December 5th meeting, and you'll have two full agendas in December. The way the calendar worked; nothing came in for the second November meeting. We do feel like you could cancel it if you wanted to.

VII. Reports of Committees: Ms. Hebert stated the Housing Working Group is meeting tomorrow to review scope of work for The Housing Opportunity grant application. We have that scheduled to come to the Planning Board for review and discussion at your November 7th meeting. Chair Fairman stated I won't be able to be there because of Southern New Hampshire Regional Commission tomorrow. Anything else that needs to be brought up with Board tonight? Any other comments or questions?

VIII. Adjournment:

MOTION by Vice Chair Newberry to adjourn at 7:27pm. Mr. Sullivan duly seconded the motion. Vote taken – all in favor. Motion carried.

The next meeting of the Planning Board is scheduled for November 7, 2022.

Respectfully submitted by
Sue Forcier