



**MEETING MINUTES
FOR
BARRINGTON PLANNING BOARD
IN PERSON LOCATION**

**Early Childhood Learning Center
77 Ramsdell Lane
Barrington, NH 03825**

OR

**You are invited to appear by audio phone or computer see below:
The public has access to contemporaneously listen and, if necessary, participate in the
meeting through dialing the following phone #603-664-0240 and Conference ID:
823681769# OR link**

**(Approved January 4, 2022)
Tuesday, December 14, 2021
6:30 p.m.**

Please note that all votes that are taken during this meeting shall be done by Roll Call vote.

ROLL CALL

Members Present

James Jennison, Chair
Jeff Brann, Vice Chair
Steve Diamond-Remotely
Andy Knapp ex- officio
Ron Allard

Members Absent

Buddy Hackett
Andrew Melnikas
Donna Massucci

Code Enforcement Officer: John Huckins
Staff: Barbara Irvine
Town Administrator: Conner MacIver
Planning Consultant: Carol Ogilvie

FIRST PUBLIC HEARING FOR PROPOSED 2022 ZONING AMENDMENTS

2022 ZONING BALLOT

Article 2 – ZONING (Language with a ~~striketrough~~ is proposed to be deleted, and language with ***bold italic*** is new language.)

Are you in favor of Amendment #1 for the Barrington Zoning Ordinance as proposed by the Planning Board to amend the Zoning Map by changing Tax Map 220 Lots 57 and 57-1 through 57-17 from Regional Commercial to General Residential?

Board had no comment.

J. Jennison opened public comment.

Stephen Jeffery from 128 France Road expressed that he had concerns with Amendment #1 and #2 in that it sounds a lot like spot zoning. Steven explained that Route 125 was zoned commercial and how can the Town prevent someone from putting something on a residential lot.

J. Brann explained that the 500' on Route 125 (Calef Highway) was preserved commercial and they received the proper approval to have the residential in the back. J. Brann explained the location to Mr. Jeffery that the lots are behind where the Town Hall would be.

John Huckins explained that the intent was because of the residential lots, someone could come in the in the Commercial zone and meet the requirements to put a business in the middle of a residential neighborhood. John explained that reason to change this so that would not happen.

Stephen explained that he felt it was not in the Town's best interest and gave the Board documents (that are attached to the end of these minutes).

A. Knapp explained that looking at the lots that are there and expressed to Mr. Jeffery that he made a reference to spot zoning which was what it was in the original layout. A. Knapp explained that the Board was trying to clean all of this up so that it was clear where commercial and residential was.

Stephen expressed that the Board should be careful how they are doing this so that it doesn't look like someone was getting special treatment.

J. Jennison explained that it backs off spot zoning.

A. Knapp expressed that the Board was trying to clean it up so that it doesn't look like spot zoning.

Stephen expressed that it looks like the Board was preventing someone from putting commercial there.

John Huckins explained that if you go by the State requirements and Town regulations that the idea behind zoning was to separate commercial from residential use as it would cause a conflict between the uses. John explained that if the Town doesn't do this, they are causing their own problems.

R. Allard explained that they are trying to clean this up.

J. Jennison closed public comment.

A motion was made by J. Brann and seconded by A. Knapp to move forward Amendment #1 to Article #2 as proposed by the Barrington Planning Board.

Roll Call:

R. Allard-Yay

J. Brann-Yay

A. Knapp-Yay

J. Jennison-Yay

S. Diamond-Yay

This amendment was recommended by the Planning Board 5-0.

***Explanation:** The purpose of this amendment is to zone these lots to be consistent with their current use, which is as part of an Open Space Subdivision and therefore no longer appropriate for commercial use.*

Are you in favor of Amendment #2 for the Barrington Zoning Ordinance as proposed by the Planning Board to amend the Zoning Map by changing Tax Map 223 Lots 24 & 26 from Regional Commercial to General Residential after the first 500 feet from Route 125?

J. Jennison opened public comment.

J. Jennison explained that Steven Jeffery's concerns were the same as in Amendment #1 and the documents would be attached to the minutes.

J. Jennison closed public comment.

A motion was made by J. Brann and seconded by A. Knapp to move forward Amendment #2 as proposed by the Barrington Planning Board.

Roll Call:

R. Allard-Yay

J. Brann-Yay

A. Knapp-Yay

J. Jennison-Yay

S. Diamond-Yay

This amendment was recommended by the Planning Board 5-0.

***Explanation:** The purpose of this amendment is to zone the remainder of this parcel for uses that are consistent with its current approved uses.*

Are you in favor of Amendment #3 for the Barrington Zoning Ordinance as proposed by the Planning Board to amend the Zoning Map by changing Tax Map 251 Lots 64 & 65 from General Residence to Regional Commercial?

J. Jennison opened public comment.

J. Jennison closed public comment.

A motion was made by A. Knapp and seconded by J. Brann to move forward Amendment #3 to rezone Map 251, Lots 64 & 65 from General residential to Regional Commercial as proposed by the Barrington Planning Board.

Roll Call:

R. Allard-Yay

J. Brann-Yay

A. Knapp-Yay

J. Jennison-Yay

S. Diamond-Nay

This amendment was recommended by the Planning Board 4-1.

***Explanation:** The purpose of this amendment is to zone these two parcels for uses that are consistent with their current use and to increase the opportunities for commercial development in this location.*

Are you in favor of Amendment #4 for the Barrington Zoning Ordinance as proposed by the Planning Board to amend Section 2.1.1 as follows?

Should any of the three amendments proposed above pass, change the date of the Zoning Map from March 8, 2005 to March 8, 2022, and modify the last sentence to read “A reproduction of this map is contained in the appendix of this Ordinance ***and available on the Town’s website.***”

J. Jennison opened public comment.

J. Jennison closed public comment.

A motion was made by J. Brann and seconded by A. Knapp to move forward Amendment #4 to amend Section 2.1.1 of the Zoning Ordinance as proposed by the Barrington Planning Board.

Roll Call:

R. Allard-Yay

J. Brann-Yay

A. Knapp-Yay

J. Jennison-Yay

S. Diamond-Yay

This amendment was recommended by the Planning Board 5-0.

Explanation: *The purpose of this amendment is to update the date of the Zoning Map, should any of the first three proposed amendments pass, and to direct people to the Town's website.*

Are you in favor of Amendment #5 for the Barrington Zoning Ordinance as proposed by the Planning Board to amend Table 2 by adding a new Footnote (l) to Regional Commercial, as follows?

(l) On other than State roads (i.e., Routes 4 and 125), the minimum front setback is 40 feet.

This amendment was recommended by the Planning Board 5-0.

Explanation: *The purpose of this amendment is to formalize what has been standing practice.*

J. Jennison opened public comment.

J. Jennison closed public comment.

A motion was made by J. Brann and seconded by R. Allard to move forward Amendment #5 to amend Table 2 of the Zoning Ordinance as proposed by the Barrington Planning Board.

Roll Call:

R. Allard-Yay

J. Brann-Yay

A. Knapp-Yay

J. Jennison-Yay

S. Diamond-Yay

This amendment was recommended by the Planning Board 5-0.

Explanation: *The purpose of this amendment is to formalize what has been standing practice.*

Are you in favor of Amendment #6 for the Barrington Zoning Ordinance as proposed by the Planning Board to amend Section 6.2.2(3) as follows?

The total amount of open space that is identified as open water, wetland soils, exposed ledge, or other terrain conditions that would normally be considered otherwise undevelopable, shall not constitute more than fifty percent (50%) of the area ~~proposed~~ **required** as open space within a Conservation Subdivision.

J. Jennison opened public comment.

K. Grossman from 435 Scruton Pond Road and Chair of the Conservation Commission felt if the conservation had discussed this, they would have liked it.

J. Brann explained that this was proposed zoning change because of a subdivision that came before the Board and the percentage of the requirement for the development.

J. Jennison explained to the Board Mr. Grossman's concerns about the part "other terrain conditions that would normally be considered otherwise undevelopable" this could vary depending on who was making the judgment.

John Huckins explained that you want to be consistent.

J. Jennison closed public comment.

A motion was made by R. Allard and seconded by J. Brann to move forward Amendment #6 to amend Section 6.2.2 (3) of the Zoning Ordinance as proposed by the Barrington Planning Board.

Roll Call:

R. Allard-Yay

J. Brann-Yay

A. Knapp-Yay

J. Jennison-Yay

S. Diamond-Yay

This amendment was recommended by the Planning Board 5-0.

***Explanation:** The purpose of this amendment is to make clear that the minimum required buildable land (50%) in the open space is based on the minimum amount of land required to be open space, allowing the developer to offer additional open space without the additional open space having to meet the 50% buildable requirement.*

Are you in favor of Amendment #7 for the Barrington Zoning Ordinance as proposed by the Planning Board to amend Section 7.3 as follows?

7.3(1).....A home occupation ~~may~~ **shall** only be conducted **totally** within **the structure** of a single-family dwelling **and only by the legal residents of the dwelling.**

J. Jennison opened public comment.

J. Jennison closed public comment.

A motion was made by A. Knapp and seconded by J. Brann to move forward Amendment #7 to amend Section 7.3(1) of the Zoning Ordinance as proposed by the Barrington Planning Board.

Roll Call:

R. Allard-Yay

J. Brann-Yay

A. Knapp-Yay

J. Jennison-Yay

S. Diamond-Yay

This amendment was recommended by the Planning Board 5-0.

***Explanation:** The purpose of this amendment is to clarify the original intention of this section.*

Are you in favor of Amendment #8 for the Barrington Zoning Ordinance as proposed by the Planning Board to amend Section 7.3 as follows?

7.3(3).....No more than ~~thirty percent (30%)~~ **500 square feet** of the dwelling's net living area shall be devoted to such use.

J. Jennison opened public comment.

J. Jennison closed public comment.

A motion was made by A. Knapp and seconded by J. Brann to move forward Amendment #8 to amend Section 7.3(3) of the Zoning Ordinance as proposed by the Barrington Planning Board.

Roll Call:

R. Allard-Yay

J. Brann-Yay

A. Knapp-Yay

J. Jennison-Yay

S. Diamond-Yay

This amendment was recommended by the Planning Board 5-0.

Explanation: *The purpose of this amendment is to clarify the original intention of this section and to ensure that the Home Occupation remains secondary and incidental to the primary residential use.*

Are you in favor of Amendment #9 for the Barrington Zoning Ordinance as proposed by the Planning Board to amend Section 7.4 as follows?

7.4(7).....The home business (***including storage***) shall be totally conducted within the designated accessory ***and dwelling structure(s)***, but may occupy an area outside said structure(s) if this area is adequately screened with fencing or a vegetative buffer. In no case shall the activities of home business, both inside and outside the accessory ***and dwelling structure(s)*** occupy more than ~~4,500~~ ***2,000*** square feet ***or cover more than 10% of the lot, whichever is less.***

J. Jennison opened public comment.

Stephen Jeffery from 128 France Road asked if agriculture businesses were included in this and asked if they were exempt from these.

John Huckins explained only if for the higher density of farm animals.

Stephen expressed that forestry was under agriculture.

J. Brann explained that was allowed.

J. Jennison explained the percentage was there for the larger businesses in Town that would be suitable.

J. Jennison closed public comment.

A motion was made by A. Knapp and seconded by J. Brann to move forward Amendment #9 to amend Section 7.4 of the Zoning Ordinance as proposed by the Barrington Planning Board.

Roll Call:

R. Allard-Yay
J. Brann-Yay
A. Knapp-Yay
J. Jennison-Yay
S. Diamond-Yay

This amendment was recommended by the Planning Board 5-0.

Explanation: *The purpose of this amendment is to clarify the original intention of this section and to ensure that the Home Business remains secondary and incidental to the primary residential use.*

Are you in favor of Amendment #10—9.5.1(5)

A motion was made by S. Diamond to not move forward Amendment #10 for Section 9.5.1(5).

There was no second to the motion and therefore no action on the motion was taken.

A motion was made by J. Jennison to move forward Amendment #10 for Section 9.5.1(5).

There was no second to the motion, no action on the motion was taken, and therefore the amendment did not move forward.

Are you in favor of Amendment #11 for the Barrington Zoning Ordinance as proposed by the Planning Board as follows?

To amend Article 19 by changing Bed & Breakfast from a Permitted Use to Permitted by Conditional Use in Village, Town Center, and Regional Commercial Districts.

J. Jennison opened public comment.

J. Jennison closed public comment.

A motion was made by J. Brann and seconded by R. Allard to move forward Amendment #11 to amend Article 19 of the Zoning Ordinance as proposed by the Barrington Planning Board.

Roll Call:

R. Allard-Yay
J. Brann-Yay
A. Knapp-Yay
J. Jennison-Yay
S. Diamond-Yay

This amendment was recommended by the Planning Board 5-0.

Explanation: *The purpose of this amendment is to allow more Planning Board oversight and abutter input into a use that can have varying impacts depending on the neighborhood and the intensity of the use.*

Are you in favor of Amendment #12 for the Barrington Zoning Ordinance as proposed by the Planning Board as follows?

To amend Article 19 by changing Drug Store from a Permitted Use to Permitted by Conditional Use in Village, Town Center, and Regional Commercial Districts.

J. Jennison opened public comment.

J. Jennison closed public comment.

A motion was made by J. Jennison and seconded by S. Diamond to move forward Amendment #12 to amend Article 19 of the Zoning Ordinance as proposed by the Barrington Planning Board.

Roll Call:

R. Allard-Nay

J. Brann-Nay

A. Knapp-Yay

J. Jennison-Yay

S. Diamond-Yay

This amendment was recommended by the Planning Board 3-2.

***Explanation:** The purpose of this amendment is to allow more Planning Board and abutter oversight into a use that can have varying impacts depending on the neighborhood and the intensity of the use.*

Are you in favor of Amendment #13 for the Barrington Zoning Ordinance as proposed by the Planning Board to amend Section 4.2.2(3) by increasing the minimum lot size for multi-family housing in the Village District, as follows?

The minimum lot size for multi-family housing developments shall be 80,000 sq. ft. for the first **dwelling** unit...Each additional dwelling **unit** shall require ~~40,000~~ **40,000** sq. ft. of upland area per dwelling unit.

J. Jennison opened public comment.

J. Jennison closed public comment.

A motion was made by A. Knapp and seconded by J. Brann to move forward Amendment #13 to amend Section 4.2.2(3) of the Zoning Ordinance as proposed by the Barrington Planning Board.

Roll Call:

R. Allard-Yay

J. Brann-Nay

A. Knapp-Yay

J. Jennison-Yay

S. Diamond-Yay

This amendment was recommended by the Planning Board 4-1.

***Explanation:** The purpose of this amendment is to encourage more mixed use/commercial development in the Village District by facilitating economies of scale that make it advantageous to a developer to include commercial uses.*

The following will be a public hearing on January 4, 2022.

Are you in favor of Amendment #14 for the Barrington Zoning Ordinance submitted by petition to delete Section 9.5.1(5) in its entirety?

OTHER BUSINESS BEFORE THE BOARD

John Huckins asked what CMA Engineers were to review for the 2A Tactical application, The Board agreed on the roadway of Bumford Road and the drainage.

John Huckins asked about applicants being present, in person, for continuances.

The Board agreed applicant attend remotely for continuance and if a new application.

DOCUMENT FROM STEPHEN JEFFERY FOLLOWS:

Document #1
Stephen Jeffery

A Word About Spot Zoning.

Spot zoning is used by many people to describe many different zoning actions. Often, this phrase is improperly used to frighten municipalities away from land use controls that would have a positive impact upon the community if implemented.

Spot zoning is segregating a single parcel or group of parcels for preferential or unequal adverse treatment: "An area is spot zoned when it is singled out for treatment different from that of similar surrounding land which cannot be justified on the bases of health, safety, morals or general welfare of the community and which is nor in accordance with a comprehensive plan." Miller v. Town of Tilton, 139 N.H. 429, 431-32 (1995) (internal quotations and citation omitted). "The mere fact that an area is small and is zoned at the request of a single owner and is of greater benefit to him than to others does not make out a case of spot zoning if there is a public need for it or a compelling reason for it." Id. For example, an ordinance which allows a municipality to "respond to private entreaties from land owners" for rezoning "without regard to the surrounding community" constitutes spot zoning. Cheney v. Village 2 at New Hope, 241 A.2d 81, 84 (Pa. 1968). However, a rezoning which is supported by the public which, for example, extends an agricultural buffer zone further into an industrial-zoned area is not spot zoning. Miller, 139 NH. at 432.

Conditional rezoning and contract zoning are sometimes improperly equated to spot zoning. However, many types of rezoning are not actually spot zoning. "[T]he real test for spot zoning is whether the change is other than part of a well-considered and comprehensive plan calculated to serve the general welfare of the community. [This] depends on the reasonableness of the rezoning in relation to neighboring uses" Mayor and Council of Rockville v. Rylins Enterprises, 814 A.2d 469, 481 (Md 2002).

From Innovative Land Use Controls: Reexamining Your Zoning Ordinance - NHMA Law Lecture #3, Fall 2012 (page 24)

New Hampshire Practice, Vol. 15, Land Use Planning and Zoning, Third Edition, Atty. Peter J. Loughlin

The antithesis of zoning by district is spot zoning. [158] This is the term used by the courts to describe a zoning amendment that is invalid because it is not in accordance with a comprehensive plan. [159] It is the singling out of a small parcel of land for a use classification totally different from that of the surrounding area, for the benefit of the owner of such property and to the detriment of other owners. [160]

Zoning ordinances are presumed to be valid. The person challenging a zoning change has the burden of proving that a zoning change is unreasonable or unlawful. [161] Changes in zoning boundaries can be justified only when they are for the purpose of promoting health, safety, morals, or the general welfare of the community. Furthermore, they must be made in accordance with a comprehensive plan. Adjoining property owners are entitled to rely on the rule that a classification, once made, will not be changed unless the change is required for the public good. [162]

A court will find that a change has resulted in "spot zoning" when the area is singled out for a treatment different from that of similar surrounding land which cannot be justified on the basis of health, safety, morals, or the general welfare of the community, and is not in accordance with a comprehensive plan. On the other hand, the mere fact that an area is small, is zoned at the request of a single owner, and is of greater benefit to that owner than to others does not make out a case of spot zoning if there is a public need or a compelling reason for it. [163]

Spot zoning was not found in *Schadlick v. Concord*. [164] In this case, sixty acres were rezoned from agricultural and single residential to multifamily residential. The rezoned area was adjacent to land currently used for multi-family residences. [165] Under the previous zoning, suitable space did not exist for needed apartments. [166] Therefore, the court held that the zoning change was not unreasonable. [167] On the other hand, the court did find spot zoning in *Bosse v. Portsmouth*. [168] Here the legislative body rezoned an area surrounded by single-family residential to light industrial although hundreds of acres of industrial property were vacant. [169] In *Munger v. Exeter*, [170] the court found no public need or compelling reason for the rezoning of a half-acre lot from residential to commercial. The court remanded the case to the Superior Court with instructions to vacate the decision of the town meeting.

In *Portsmouth Advocates, Inc. v. City of Portsmouth*, [171] the New Hampshire Supreme Court found that spot zoning had not occurred when the city council amended the historic district to remove a two block area containing seven buildings. [172] Even though the

removed from the district were not of historical value and that the rezoning was not inconsistent with the city's comprehensive plan. [173]

In *Miller v. Town of Tilton* [174] the expansion of an agricultural buffer zone to include plaintiffs' land which had previously been zoned industrial was not spot zoning. Plaintiffs' land was on the border between the industrial and agricultural zones. Although the property was zoned for industrial use when plaintiffs purchased it and when an abutting property owner submitted a petitioned zoning article to enlarge the agricultural zone to its original border, including the plaintiffs' land, the zoning of that particular parcel had changed several times over the years. [175] The Court seemed to be swayed by the fact that the zoning amendment did not create a new, incongruous district, but merely extended a pre-existing district. It also seemed influenced by the fact that the amendment had been supported by a majority of the public and that it could be found to protect the health and welfare of area residents. [176]

158 1 K. Young, *Anderson's American Law of Zoning*, § 5.12 (1996).

159 *Id.*

160 *Id.*

161 RSA 677:6; *Rochester v. Barcomb*, 103 NH 247, 169 A.2d 281 (1961).

162 *Bosse v. Portsmouth*, 107 NH 523, 226 A.2d 99 (1967) (rezoning of a 42-acre parcel to light industrial when it was surrounded by hundreds of acres of residentially zoned property was invalid; testimony showed no compelling need for more limited industrial land, since the city had over 800 acres zoned for this purpose and almost 700 of those acres were vacant).

163 *Shadlick v. Concord*, 108 NH 319, 234 A.2d 523 (1967).

164 Id. 165 Id. at 323, 234 A.2d at 526.

166 Id.

167 Id.

168 107 NH 523, 226 A.2d 99 (1967).

169 The Bosse case is a good example of a legislative body attempting to use the zoning process to accomplish a particular good for a person or group of persons without paying proper attention to the fact that land use regulation is designed to affect the land and not necessarily just the persons presently desiring to use it. The small island of land had been rezoned at the request of a popular and useful citizen so that she could construct a new, handicapped workshop and expand to a different area of the community a meritorious use that she had started in another location.

170 128 NH 196, 512 A.2d 418 (1986). 171 133 NH 876, 587 A.2d 600 (1991).

172 Portsmouth Advocates, Inc. v. City of Portsmouth, 133 NH 876, 880, 587 A.2d 600, 603 (1991).

173 Id.

174 139 NH 429, 655 A.2d 409 (1995)

175 Id.

176 Id. At 432, 655 A.2d at 410

Document #2
Stephen Jeffery

Issues for Planning Board First Public Hearing 12-14-2021
Proposed amendments to the Zoning Ordinance 9.5.1(5)

To Barrington Planning Board:

RSA 676:14 Requires the provision that imposes the greater restriction or higher standard shall be controlling.

3.1(1) A permit for the construction, installation, development, alteration, enlargement, moving, demolition, or use of a building or structure shall not be issued by the Building Inspector, or other town official, unless it complies with the provisions of this Article and/or has been granted a variance or special exception by the Zoning Board of Adjustment.

5.2 Nonconforming Structures

Where a lawful building or structure exists at the effective date of this Ordinance, or applicable amendment, that could not be built under the terms of this Ordinance or amendment by reason of restrictions on area, lot coverage, height, setbacks, or other dimension requirements, the building or structure may be continued so long as it remains otherwise lawful. Such a nonconforming building or structure may not be enlarged, expanded, or otherwise altered in such a manner that results in said building or structure being made less conforming to the provisions of this Ordinance, except as provided for below.

5.3(1)A nonconforming use may not be changed to another nonconforming use, extended or enlarged to occupy a greater area of land than was occupied at the effective date of adoption or amendment of this Ordinance, except as provided for in Subsection 5.3.5 below. Comment - **There is no subsection 5.3.5.**

9.5(1) A buffer area of fifty (50) feet is required from the edge of any wetland. **This provision of the Ordinance was adopted on March 13, 2001 and is effective from that date.**

9.5.1(2) An existing building within a buffer area may be repaired and/or replaced provided that the new or repaired structure, including any impermeable surfaces, shall not extend further into the buffer area than the footprint of the original foundation.

RSA 674:19 requires any alteration of a building or change of use shall be subject to the current zoning ordinance.

The planning board has proposed changing 9.5.1(5) to read:

We all prefer to have binary choices in life, like black and white or good and evil. The Barrington Zoning Ordinance (ZO) has been described as a matrix and is much more complicated.

The Planning Board incorrectly states the purpose is to provide relief for improved lots and that they be treated the same. The Town has stated that the current ZO is interpreted to include the term "improved" and consistent with past practice that exempts some improved lots from compliance with the wetland buffer restrictions. Our ZO prohibits this application of a buffer exemption. Courts have ruled that ZO language cannot be inserted where the creators did not see fit to include it.

This original provision was created to extend the five year exemption provided by RSA 674:39. Owners of lots approved just prior to 2001 were concerned the new ordinance would negatively impact development opportunities on their recently purchased property.

I was required to comply with wetland buffer restrictions in 2009 for my circa 1850 property. The current ZO language and intent was re-affirmed in 2016. This proposed amendment is discriminatory and all properties should be treated equally regardless of date of lot creation.

The intent of this proposed amendment conflicts with numerous more restrictive provisions of the ZO including but not limited to the following provisions.

1.2 Effective Date of Ordinance

The effective date of this Ordinance is March 8, 2005 the date of adoption by Town vote. Zoning ordinance has been amended 12 times since 2005.

1.3 Applicability

More specifically, this Ordinance is intended:

1.3(2) To safeguard natural resources such as ponds, lakes, rivers, streams, wetlands, forests and aquifers;

1.6 Interpretation

The provisions of this Ordinance shall be interpreted as minimum requirements adopted for the promotion of the public health, safety and welfare and other purposes noted above.

RSA 676:14 Requires the provision that imposes the greater restriction or higher standard shall be controlling.

3.1(1) A permit for the construction, installation, development, alteration, enlargement, moving, demolition, or use of a building or structure shall not be issued by the Building Inspector, or other town official, unless it complies with the provisions of this Article and/or has been granted a variance or special exception by the Zoning Board of Adjustment.

5.2 Nonconforming Structures

Where a lawful building or structure exists at the effective date of this Ordinance, or applicable amendment, that could not be built under the terms of this Ordinance or amendment by reason of restrictions on area, lot coverage, height, setbacks, or other dimension requirements, the building or structure may be continued so long as it remains otherwise lawful. Such a nonconforming building or structure may not be enlarged, expanded, or otherwise altered in such a manner that results in said building or structure being made less conforming to the provisions of this Ordinance, except as provided for below.

5.3(1)A nonconforming use may not be changed to another nonconforming use, extended or enlarged to occupy a greater area of land than was occupied at the effective date of adoption or amendment of this Ordinance, except as provided for in Subsection 5.3.5 below. Comment - **There is no subsection 5.3.5.**

9.5(1) A buffer area of fifty (50) feet is required from the edge of any wetland. **This provision of the Ordinance was adopted on March 13, 2001 and is effective from that date.**

9.5.1(2) An existing building within a buffer area may be repaired and/or replaced provided that the new or repaired structure, including any impermeable surfaces, shall not extend further into the buffer area than the footprint of the original foundation.

RSA 674:19 requires any alteration of a building or change of use shall be subject to the current zoning ordinance.

The planning board has proposed changing 9.5.1(5) to read:

~~This ordinance shall not prohibit the construction of principal and accessory structures within the buffer zone on lots that legally existed on or before March 13, 2001.~~

The Zoning Ordinance defines the term Lot:

Lot An area or parcel of land, or any part thereof, that can be legally developed under the terms of this Ordinance.

Wetlands exist whether or not they have been delineated. By definition a "lot" does not include wetland or wetland buffers. The Planning Board's proposed ordinance

amendment does not even create the change that was the stated intention. And the stated intent of proposed amendment is more permissive and conflicts with many other more restrictive provision of the zoning ordinance, making it ineffective.

The real purpose of this proposed amendment is the result of my own inquiry. A proposal came before the selectmen to demolish an existing house on Mica Point Road and to construct a new house. The plans indicated an increase in wetland buffer impacts. The Town defended the issuance of a building permit with a claim that the property was exempt from wetland buffer restrictions by 9.5.1(5). Attached is some text of the subsequent email exchange with the Town. 9.5.1(2) specifically prohibits exactly what the Town has permitted.

The Planning Board should withdraw the proposed amendment should and the current article 9.5.1(5) should be revoked. Twenty years have passed since the article was passed. Sufficient time has property owners to have exercised their construction plans. Wetlands and the associated wetland buffers are an unwise location for development.

Respectfully submitted,



Stephen Jeffery

From: sjeffery@metrocast.net <sjeffery@metrocast.net>
Sent: Tuesday, June 15, 2021 8:20 AM
To: Conner MacIver <cmaciver@barrington.nh.gov>
Subject: wetland buffer

Conner,
Please cite the ZO provision that exempts the lot on Mica Point from the wetland buffer requirements.
Thanks, Stephen

9.5.1(5)

John Huckins CBO, MCP

Building Inspector
Zoning Administrator
PO Box 660
333 Calef Hwy
Barrington NH 03825
603-664-0330

My interpretation is the last words after Planning Board is "or which otherwise legally existed on or before March 13,2001" applies to any lot rather it had improvements or not.

Any one with standing can appeal my decision to the ZBA within 30 days of my decision.

SETTING OF DATE, TIME AND PLACE OF NEXT MEETING AND ADJOURNMENT

The next meeting will be on January 4, 2022, at 6:30 p.m. at the ECLC 77 Ramsdell Lane.

Without objection the meeting was adjourned at 8:34 p.m.