

**Pittsfield Planning Board
Town Hall, 85 Main Street
Pittsfield, NH 03263
Minutes of Public Meeting**

DATE: Thursday, January 5, 2017

AGENDA ITEM 1: Call to Order

Chair Clayton Wood called the meeting to order at 7:04 P.M.

AGENDA ITEM 2: Roll Call

Planning board members present:

Clayton Wood (chair),

Jim Pritchard (secretary),

Pat Heffernan,

Carole Richardson (alternate for the selectmen's ex officio member), and

Paul Nickerson (alternate)

Planning board members absent:

Daren Nielsen (vice-chair),

Gerard LeDuc (selectmen's ex officio member), and

Roland Carter (alternate)

Members of the public appearing before the planning board: Deidra

Benjamin, Michael Benjamin, and Mark Sargent, surveyor for the

Benjamins.

“Members of the public appearing before the planning board” includes only members of the public who spoke to the board. It does not include members of the public who were present but who did not speak to the board.

AGENDA ITEM 3: Public Input

Paul Nickerson sat in Daren Nielsen's place.

No public input.

AGENDA ITEM 5: Application by Michael and Deidra Benjamin, 100 Leavitt Road, Pittsfield NH 03263 for an Exemption from a Site Plan Review for an Auto-Body Repair business proposed at the property at the same address (Map R35 Lot 17) within the Rural district.

Clayton Wood said that the Benjamins had had a conceptual consultation with the planning board (on July 7, 2016) and that the Benjamins' presentations to the planning board and to the zoning board of adjustment (for a special exception for a major automobile repair shop on August 25, 2016) had been consistent.

Jim Pritchard said that the planning board had been unsure of whether the Benjamins had satisfied the parking-space requirements of the zoning ordinance. (Zoning ordinance, article 6, section 2, (c).) Jim Pritchard said that Mark Sargent had submitted a letter saying that the Benjamins had 11 off-street parking spaces, which, Jim Pritchard said, was one more than the 10 off-street parking spaces that the Benjamins needed to satisfy the zoning ordinance.

Clayton Wood raised the question of whether exemptions from site plan review required public notice.

Pat Heffernan said that the notice of the application for special exception from the zoning board of adjustment was enough notice to the public and to the abutters.

Jim Pritchard said that he disagreed with Pat Heffernan. Jim Pritchard said that he thought that the state law (RSA 676:4, I, (e)) required the planning board to give notice of an application for exemption from site plan review. Jim Pritchard said that he did not know how anyone would know that the board might grant the Benjamins an exemption from site plan review when the board had given no public notice that the board would consider the Benjamin application. Jim Pritchard said that now might not be the best time to insist on notice of the application for exemption from site plan review because the site plan review regulations say nothing about giving notice of an application for exemption from site plan review.

Clayton Wood said that he thought that notice was not necessary.

Mark Sargent said that the painting business is heavily regulated and that the zoning board of adjustment did give notice (of a hearing on the application for special exception for a major automobile repair shop).

Clayton Wood asked how long ago the Benjamins' shop had been an automobile body shop before.

Deidra Benjamin said that the shop had been an automobile body shop until the prior operator of the shop as an automobile body shop had died.

Clayton Wood read Mark Sargent's letter requesting exemption from site plan review:

Dear Chairman & Members of the Board;

On behalf of Michael and Deidra Benjamin I am writing to request an exemption to formal site plan review for the Auto-Body repair business the Benjamin's are proposing at their home at 100 Leavitt Road. Exemptions are permitted per section II B of the site plan review regulations in cases where the use does not require exterior construction or expansion of the building or site.

The Benjamin's propose to resurrect the former use of the property within the existing garage. The business would work on 4-6 vehicles per week and said vehicles would be stored either within the garage or behind the same on a gravel parking area which can accommodate 6 parking spaces. Business hours would be 7:00am to 5:00pm Monday through Friday and 8:00am to 1:00pm on Saturdays.

The site has sufficient parking to accommodate the vehicles to be serviced, the one or two clients that may be at the facility per day, and the Benjamin's home without creating additional off-street parking

The property has an existing septic system which meets the loading requirements of the home and garage and no additional loading is proposed.

The business will generate only two to four additional vehicle trips per day and will not require additional groundwater use. All paints and products used by the business will be stored and used properly, and a disposal company will be contracted to properly dispose of any hazardous materials.

No changes to the site are proposed, therefore the drainage patterns as it currently exists will not change, proper solid waste facilities will be provided and no additional outside light fixtures are proposed. The only noise generated by the facility will be from an existing compressor, which is housed within a small containment attached to the garage and proper, recently upgraded filters will prevent fumes and odors from escaping the building.

In August of this year the Benjamins were granted a special exception by the Zoning Board of Adjustment, to permit an automobile repair shop in the rural zone.

Thank you for your consideration.

* * * * *End of the Sargent letter

The board also had a rough site plan in addition to the Sargent letter.

Clayton Wood said that his concern with the Benjamin project was screening the project from neighboring residential properties. Clayton Wood said that the Benjamins' provisions for parking are adequate with one extra parking space. Clayton Wood said that the Benjamins should be sure to state a realistic number of cars to be parked on the lot, so that the Benjamins do not need to return to the planning board if business improves and expands.

Michael Benjamin said that he would be the only employee.

Clayton Wood asked whether the air filtering equipment were OSHA approved. ("OSHA" means the federal occupational safety and health administration.)

Michael Benjamin said yes.

Clayton Wood asked whether anyone inspected the automobile body shop for proper operation and especially for proper filtering of fumes.

Paul Nickerson said that the State of New Hampshire inspects automobile body shops for proper operation.

Clayton Wood reviewed the conditions for an exemption from site plan review:

- a. No additional off-street parking is required as determined by the requirements of the Zoning Ordinance;
- b. Septage loading of the site does not increase beyond that which the existing system is already designed to accept;
- c. No adverse impacts beyond the site boundaries will occur due to:
 - i. Increased traffic
 - ii. Groundwater use
 - iii. Drainage
 - iv. Sanitary and solid waste disposal
 - v. Lighting and glare
 - vi. Noise
 - vii. Fumes, odors or air pollutants
- d. Municipal services, facilities and utilities will not be overburdened or adversely impacted.

(Site plan review regulations, section II, B, 1.)

Paul Nickerson said that the shop has a cement floor.

Carole Richardson asked whether the shop would do only painting or whether the shop would also do other repairs.

Michael Benjamin said that the shop would not do state inspections but would do automobile restoration.

Paul Nickerson repeated that the State of New Hampshire inspects automobile body shops regularly.

Pat Heffernan moved to approve the exemption from site plan review.

Clayton Wood seconded the motion.

Discussion: No further discussion.

Vote to approve the Benjamin exemption from site plan review: carried 5 - 0 - 0. Voting "yes": Jim Pritchard, Pat Heffernan, Clayton Wood, Paul Nickerson, and Carole Richardson. Voting "no": none. Abstaining: none.

Clayton Wood said that the board would do a notice of decision within 5 business days.

The board's notice of decision approving the exemption from site plan review is appended at the end of this minutes document. (See RSA 676:3, II.)

AGENDA ITEM 4: Approval of the Minutes of the December 1, 2016 and December 15, 2016 Meetings

Clayton Wood moved to approve the minutes of December 1, 2016, as written in draft.

Paul Nickerson seconded the motion.

Discussion:

Jim Pritchard referred to agenda item 5, Master Plan Committee Presentation, page 6, housing chapter, "The values of homes in Pittsfield are about \$20,000." Jim Pritchard said that \$20,000 seemed low and that he wanted to check the audio recording to see what Ralph Odell had actually said.

Carole Richardson referred to agenda item 5, Master Plan Committee Presentation, page 6, housing chapter, "Pittsfield's tax rate, \$36.35/\$1000," and said that \$36.35/\$1000 seemed higher than the tax rate actually is and that she would like Jim Pritchard to check this value too.

The board said that it wanted Jim Pritchard to add a note that \$36.35/\$1000 seemed high if \$36.35/\$1000 was what Ralph Odell said.

Vote to approve the minutes of December 1, 2016, with changes as indicated above if Jim Pritchard finds that the audio recording indicates the changes: carried 4 - 0 - 1. Voting "yes": Jim Pritchard, Pat Heffernan, Clayton Wood, and Paul Nickerson. Voting "no": none. Abstaining: Carole Richardson.

Comment of recording secretary Jim Pritchard: The changes to the draft minutes of December 1, 2016, are as follows:

Agenda item 5, Master Plan Committee Presentation, page 6, housing chapter: Change

“The values of homes in Pittsfield are about \$20,000, which is less than the values of homes in Epsom and Northwood.”

to

“The values of homes in Pittsfield are about \$20,000 less than the values of homes in Epsom and Northwood.”

Agenda item 5, Master Plan Committee Presentation, page 6, housing chapter: Change

“The department of revenue administration’s ratio (DRA ratio) for Pittsfield is 121%.”

to

“The department of revenue administration’s ratio (DRA ratio) for Pittsfield is 121% as of 2012.”

Agenda item 5, Master Plan Committee Presentation, page 6, housing chapter: Add the following comment after “Pittsfield’s tax rate, \$36.35/\$1000, is the fifth highest in the state.”:

(Comment of recording secretary Jim Pritchard: The tax rate of \$36.35/\$1000 is listed in table 1.8 of the draft master plan. In the review of these minutes on January 5, 2017, the board asked that a comment be inserted saying that \$36.35/\$1000 seemed higher than the tax rate actually is.)

Clayton Wood moved to approve the minutes of December 15, 2016, as written in draft.

Jim Pritchard seconded the motion.

Discussion:

No board member stated any problems in the draft minutes.

Vote to approve the minutes of December 15, 2016, as written in draft: carried 2 - 0 - 3. Voting “yes”: Jim Pritchard and Clayton Wood. Voting “no”: none. Abstaining: Pat Heffernan, Paul Nickerson, and Carole Richardson.

AGENDA ITEM 6: Proposed Changes to the Zoning Ordinance

1. Accessory Dwelling Unit
2. Principal Structure Definition

Amendment 1, new proposed permitting conditions (3) and (4) for accessory apartments:

Clayton Wood said that Paul Nickerson had asked him to revisit amendment 1, which proposes new permitting conditions for accessory apartments. Clayton Wood said that Paul Nickerson had gathered information from other towns and that Paul Nickerson’s concern was that the area that the August 28 amendment would permit for an accessory apartment is too big. The area that the August 28 amendment would permit for an accessory apartment is 750 square feet or 75% of the area of the principal dwelling unit, whichever area is greater. By contrast, the model regulation proposed by the New Hampshire Municipal Association simply restricts the area of an accessory dwelling unit to 750 square feet no matter how big the principal dwelling unit may be. (Planning board minutes, October 6, 2016, agenda item 7, page 9: “The ADU shall not exceed 750 square feet in habitable floor area.”) Clayton Wood said that Paul Nickerson’s concern stated more generally is that an accessory apartment should not be in fact half of a duplex.

Jim Pritchard explained the proposed rewording of the two new proposed permitting conditions (3) and (4) (new relative to the August 28 version):

August 28 version, proposed permitting condition (4):

“The ACCESSORY APARTMENT shall be in a DWELLING that the owner of the DWELLING occupies. The owner may occupy either the PRINCIPAL DWELLING UNIT or the ACCESSORY DWELLING UNIT. (See RSA 674:72, VI.)”

December 28 version, proposed permitting condition (4):

“The ACCESSORY APARTMENT shall be in a DWELLING where the owner of the DWELLING has his principal place of residence. The owner’s principal place of residence may be either the PRINCIPAL DWELLING UNIT or the ACCESSORY APARTMENT. (See RSA 674:72, VI.)”

Jim Pritchard said that the August 28 wording made the first sentence of proposed permitting condition (4) sound as if the owner occupied the whole dwelling instead of only one of the dwelling units. Jim Pritchard said that he had revised proposed permitting condition (4) according to the analogous permitting condition in the model regulation proposed by the New Hampshire Municipal Association:

“Either the ADU or the principal dwelling unit shall be the principal residence and legal domicile of the owner of the property.”

(Planning board minutes, October 6, 2016, agenda item 7, page 9; also see RSA 674:72, VI, in part: “A municipality may require that the owner demonstrate that one of the units is his or her principal place of residence...”)

December 28 version, proposed permitting condition (3):

“The ACCESSORY APARTMENT shall have a gross floor area that is less than or equal to 750 square feet. (See RSA 674:72, VII.) In this condition, “gross floor area” of an ACCESSORY APARTMENT means the sum of the areas of all floors of the ACCESSORY APARTMENT, as measured from the exterior faces of the walls or from the center line of a wall separating the ACCESSORY APARTMENT from the PRINCIPAL DWELLING UNIT.”

Jim Pritchard said that he had revised proposed permitting condition (3) according to the analogous permitting condition in the model regulation proposed by the New Hampshire Municipal Association:

“The ADU shall not exceed 750 square feet in habitable floor area.”

Jim Pritchard said that he had considered the dimensions of 750 square feet and that a square of approximately 27.4 feet by 27.4 feet is 750 square feet. Jim Pritchard said that 27.4 feet by 27.4 feet is bigger than many of the apartments that the master plan committee had seen in the committee’s tours of elderly housing.

Clayton Wood said that anyone needing a larger accessory apartment could apply for a variance, which would add another level of scrutiny.

Carole Richardson asked whether there were a maximum on what could be allowed by a variance.

Jim Pritchard and Pat Heffernan said no. Jim Pritchard explained that a variance is outside the zoning ordinance. Jim Pritchard explained the conditions for a variance, and Jim Pritchard stated his opinion that often applicants did not truly satisfy the condition of special conditions of the property that distinguish the property from other properties in the area. (See RSA 674:33, I, (b), (5).)

Clayton Wood said that the 750-square-foot restriction would give the zoning board of adjustment the tool necessary to control the size of accessory apartments. Clayton Wood said that he wanted the planning board to propose the new amendment 1 dated December 28, 2016.

Pat Heffernan and Paul Nickerson discussed how big 750 square feet is.

Clayton Wood repeated that he wanted the board to propose the new amendment 1 dated December 28, 2016. Clayton Wood said that amendment 1 as written would fit into the zoning ordinance well without creating a risk of unintended consequences. Clayton Wood said that there had been much discussion about whether the no-rental condition is lawful but that he had seen no law prohibiting it. Clayton Wood said that the town would reject a proposal to repeal the no-rental condition.

Paul Nickerson and Jim Pritchard discussed that no one had cited any actual law that would force the town to remove the no-rental condition.

Clayton Wood pointed out that an accessory apartment is not a house on its own; an accessory apartment is accessory to something else.

Paul Nickerson said that the no-rental condition should remain at least until someone challenged it in court. Paul Nickerson also stressed that an accessory apartment is accessory to, and thus smaller than, the principal dwelling unit.

Jim Pritchard moved to rescind the board's approval of amendment 1 dated August 28, 2016.

Clayton Wood seconded the motion.

Discussion: No discussion.

Vote to rescind the board's approval of amendment 1 dated August 28, 2016: carried 5 - 0 - 0. Voting "yes": Jim Pritchard, Pat Heffernan, Clayton Wood, Paul Nickerson, and Carole Richardson. Voting "no": none. Abstaining: none.

Jim Pritchard moved that the final form of amendment 1 shall be as in amendment 1 dated December 28, 2016.

Clayton Wood seconded the motion.

Discussion:

Paul Nickerson said that the term "accessory apartment" must be removed from the zoning ordinance in order to comply with RSA 674:71 through 73.

Paul Nickerson's concern resulted in a long discussion. Paul Nickerson cited dictionary definitions of "apartment," "residence," and "dwelling" to support his position that an apartment is a residence, not a dwelling. Paul Nickerson said that a residence, and thus an apartment, differs from a dwelling in that a dwelling is a place of long-term human occupancy whereas a residence, and thus an apartment, is a place of short-term human occupancy. The dictionary definitions that Paul Nickerson cited are as follows:

apartment: room or suite of rooms, usually on one floor, used as a residence.

residence: fact of living in a particular place.

dwel: live; reside;

Jim Pritchard disagreed with Paul Nickerson's differentiation between "dwelling" and "residence." Jim Pritchard also said that the zoning ordinance could lawfully define the term "accessory apartment" as a specific

type of accessory dwelling unit, namely an accessory dwelling unit attached to a single-family dwelling. Compare the following definitions from the current zoning ordinance:

DWELLING: “DWELLING” means a BUILDING or part thereof that is designed or used principally for residential occupancy by one or more human beings. Where the term “residential occupancy” is used in relation to either “DWELLING” or a term defined as a type of DWELLING, the term “residential occupancy” excludes occupancy in accommodations that are principally for transient lodging.

DWELLING UNIT: “DWELLING UNIT” means a DWELLING or part thereof that is designed as the living quarters for a single FAMILY and that has food storage and cooking equipment, bathroom facilities with washbowl and toilet, at least one area for eating, and at least one area for sleeping.

ACCESSORY DWELLING UNIT: “ACCESSORY DWELLING UNIT” means a DWELLING UNIT whose residential occupancy is occasioned by and subordinate to a PRINCIPAL USE and that is on the same LOT with the PRINCIPAL USE.

ACCESSORY APARTMENT:

- (a) In this definition of “ACCESSORY APARTMENT,” “house” means a DETACHED DWELLING.
- (b) “ACCESSORY APARTMENT” means the ACCESSORY DWELLING UNIT in a house that contains one PRINCIPAL DWELLING UNIT, one ACCESSORY DWELLING UNIT, and no other DWELLING UNITS.

to RSA 674:71:

“As used in this subdivision, ‘accessory dwelling unit’ means a residential living unit that is within or attached to a single-family dwelling, and that provides independent living facilities for one or more persons, including provisions for sleeping, eating, cooking, and sanitation on the same parcel of land as the principal dwelling unit it accompanies.”

Pat Heffernan and Carole Richardson were concerned that the word “apartment” might connote renting.

Clayton Wood said that the word “apartment” has no connection in law to renting.

Jim Pritchard said that the board is not proposing to add the word “apartment”—“apartment” is already there—and that the board is proposing to impose additional restrictions on accessory apartments.

Carole Richardson said that people could get variances to avoid the restrictions.

Jim Pritchard explained the variance process and that variances should be granted only when the property has true special conditions that distinguish the property from other properties in the area. Variances should not be granted because of the ZBA’s thinking that the project is a good idea. It is not the ZBA’s function to decide whether a project is a good idea; the town meeting, not the ZBA, decides what is a good idea.

Vote that the final form of amendment 1 shall be as in amendment 1 dated December 28, 2016: carried 4 - 0 - 1. Voting “yes”: Jim Pritchard, Pat Heffernan, Clayton Wood, and Carole Richardson. Voting “no”: Paul Nickerson. Abstaining: none.

Amendment 5, definition of “principal structure”:

Jim Pritchard said that his analysis of the Benjamin application had prompted him to propose a revision of the definition of “principal structure”:

Current definition:

PRINCIPAL STRUCTURE: “PRINCIPAL STRUCTURE” means a STRUCTURE where a PRINCIPAL USE is principally conducted.

Proposed definition:

PRINCIPAL STRUCTURE: “PRINCIPAL STRUCTURE” means a DETACHED STRUCTURE where one or more PRINCIPAL USES are principally conducted.

Jim Pritchard explained that the purpose of the new definition is to clarify that the whole of a single connected principal structure may contain more

than one principal use. Jim Pritchard cited the AMENICO building as a single building that has two principal uses—AMENICO and Rustic Crust—in separate parts of the same building.

Carole Richardson moved to send the new definition of “principal structure” to a public hearing.

Paul Nickerson seconded the motion.

Vote to send the new definition of “principal structure” to a public hearing: carried 5 - 0 - 0. Voting “yes”: Jim Pritchard, Pat Heffernan, Clayton Wood, Paul Nickerson, and Carole Richardson. Voting “no”: none. Abstaining: none.

AGENDA ITEM 7: Selectmen’s Report

Carole Richardson said that the economic development committee had come to the board of selectmen and that the economic development committee would come to the planning board. The economic development committee and the Central New Hampshire Regional Planning Commission will try to define the issues of development both on Route 28 and in Pittsfield’s downtown area.

Pat Heffernan and Jim Pritchard discussed that there are no local obstacles to development on Route 28. The main obstacles are the terrain and the fact that Route 28 is a state, controlled-access right-of-way.

AGENDA ITEM 8: Members’ Concerns

Members’ concern 1: Jim Pritchard’s concern with approving exemptions from site plan review without giving notice to the public or abutters.

Jim Pritchard said that he was concerned that the board should not be granting exemptions from site plan review without giving notice to the public or abutters. Jim Pritchard said that the board should make a priority of rewriting the site plan review regulations so that the regulations will require notice to the public and to abutters.

Members’ concern 2: Clayton Wood’s concern with the statutory citation for the definition of “hospital” in the zoning ordinance.

Clayton Wood said that the state legislature had repealed RSA chapter 151-C and that this repeal made the statutory citation for the definition of “hospital” in the zoning ordinance cite a now-nonexistent law. Clayton Wood said that the board would have to propose a correction sometime and that this change is the kind of change that will happen frequently because of changes in the state laws. (Comment of recording secretary Jim Pritchard: The statutory citation in the current zoning ordinance is RSA 151-C:2, Definitions, XX. The new citation will be RSA 151:2, I, (a). The definition in RSA 151:2, I, (a), is the same as the definition in RSA 151-C:2, XX, except that the definition in RSA 151:2, I, (a), has a serial comma that RSA 151-C:2, XX, does not have.)

AGENDA ITEM 9: Public Input

No public input.

AGENDA ITEM 10: Adjournment

Pat Heffernan moved to adjourn the meeting.

Clayton Wood seconded the motion.

Vote to adjourn the planning board meeting of January 5, 2017: carried 5 - 0 - 0. Voting “yes”: Jim Pritchard, Pat Heffernan, Clayton Wood, Paul Nickerson, and Carole Richardson. Voting “no”: none. Abstaining: none. The planning board meeting of January 5, 2017, is adjourned at 9:05 P.M.

Minutes approved: January 23, 2017

Clayton Wood, Chairman

Date

I transcribed these minutes (not verbatim) on January 7, 2017, from notes that I made during the planning board meeting on January 5, 2017, and from the digital audio recording that Chairman Clayton Wood made during the meeting and uploaded to the Internet.

Jim Pritchard, planning board recorder and secretary

Attachment: Notice of decision approving Michael and Deidra Benjamin's exemption from site plan review.