

**North Salem Planning Board Minutes**  
**September 22, 2010**  
**7:30 PM – Annex**

**PRESENT:**            **Cynthia Curtis, Chairwoman**  
                         **Robert Tompkins, Board Member**  
                         **Gary Jacobi, Board Member**  
                         **Charlotte Harris, Board Member**  
                         **Bernard Sweeney, Board Member**  
                         **Sonja Teichmann, Planning Consultant**

**ABSENT:**            **Roland A. Baroni, Town Attorney - not required to attend**

**Chairwoman Cynthia Curtis calls the September 22, 2010 North Salem Planning Board Meeting to order.**

**WORK SESSION:**

**1. Proposed Zoning Code Revisions:**

- Special Permit Uses – Outside Dining

Cynthia states the outdoor seating is back in front of this Board because all amendments to the Zoning Code have to be referred to the Planning Board. Since we created it, that would have sufficed. However, when it went over to the Town Board, they made a proposed change that directly affected our Board. It involved Site Plan Approval. Cynthia felt this item should go back on an Agenda for a discussion so we may provide the Town Board with our input on the proposed change. Cynthia states she is not in 100% agreement with what the Town Board has suggested. Cynthia states she likes the Town Board's suggestion of allowing the Planning Board a broader opportunity to waive Site Plan. Cynthia states the way the current Ordinance is written, we cannot waive Site Plan for an Application involving a Conditional Use Approval or a Special Permit. In order to have a Site Plan waiver for the accessory outdoor seating we have to add this little exception. Cynthia states she has concerns as to why it is written the way it is. Cynthia states the last proposal the Planning Board waived was for a generator on a tower. The tower is expected to have a Conditional Use Permit. Cynthia spoke with Roland about this and stated to him that the Application has nothing to do with a change in the Conditional Use Permit. It is a minor Site Plan item. Because the Ordinance is written in such a way, a Special Permit is involved. Roland agreed. Cynthia does not have an issue with the waiver provision and feels it should be applied to all of the Special and Use Permits when it is appropriate. Cynthia states that if we want to move this along quickly we leave it as it is and have the exception for the outdoor restaurants.

Cynthia states the other proposed change the Town Board had involved the number of outdoor seats. Mr. Kamenstein suggested 25 outdoor seats be allowed, and Mr. Bobolia suggested 50 outdoor seats be allowed and if it involves this type of seating, then there is no requirement for Site Plan. Cynthia would like language added in such as "so long as a Site Plan issue is not triggered". In other words, when there is not an increase in the number of seats. Cynthia states that the Board should reconsider this. Technically if a restaurant such as Primavera were to add 25 seats, they would have to add seven parking spaces. We are one of the few Boards who would deal with additional parking spaces. Cynthia states that if the number of additional outdoor seats does not trigger additional parking spaces, she agrees. Cynthia does not agree with this change if it will involve the use of bulldozers to dig up areas for additional parking spaces. Cynthia does not want to see this language built in to the Ordinance. Cynthia states she has a question for Roland. She could not reach

him today as he had family business to attend to. Cynthia is not sure if this proposed change would trigger the construction of more parking spaces since that is a Site Plan requirement and therefore the Applicant would have to come over to the Planning Board for Site Plan. Cynthia would like to obtain clarification from Roland.

Robert asks how many restaurants in Town currently have outdoor seating. Cynthia states that most of the existing restaurants are pre-existing non-conforming, and would not fall under this provision. This is being written in most cases where restaurants are allowed. Robert asks how other Towns handle their outdoor summer seating. Robert states to him it is a practical matter. Customers may prefer to sit outside, which would take away from the amount of seats being utilized inside. Cynthia refers to Vox where there is seating both inside and outside during the summer time. Charlotte states that very rarely does Vox go over their seating capacity, compared to Restaurant 121 which does. Cynthia states that this is the way the Town Board would like the Ordinance written. The Planning Board may want to comment on it. Cynthia would like to see language added in after the number of seats allowed which states that "so long as additional parking is not required". Gary asks who determines if additional parking is required. Cynthia states it is the Code that sets the determination based on square footage. Gary asks then wouldn't additional parking always be required? Cynthia states that is her legal question for Roland. Gary states if the language is in the Code, how would it change? Cynthia states that this Ordinance will now contradict a section of the Code. Cynthia feels the Board should obtain advice from Roland and then suggest the wording to change the Ordinance. If the Board agrees with her that only parking would be affected, we could suggest specific language be added in such as "so long as no additional parking is required". Gary asks who will determine whether additional parking is required. Cynthia states it will be on the Site Plan. There may be extra parking already in place. Cynthia refers to North Salem Center where there is a parking lot in the back which could be utilized if a restaurant were to go in up there.

Bruce states that the outdoor dining was never intended to increase capacity. Bruce states that he and Cynthia have a different opinion about this. Bruce states that restaurants are only a permitted use in a GB Zone. When discussing the NB Zone, those establishments would be non-conforming. Bruce states that this is an effort to accommodate restaurants clientele that are more likely to frequent in the summer so they may want to eat outdoors. Bruce states that most of the restaurants are limited by their Board of Health approval. The Board of Health approval is more limited than floor space and exits. We are constantly reminding the eating establishments during their annual inspections to be mindful that capacity needs to be monitored. Bruce does not know of one situation yet which was not an either/or situation, such as eating inside or outside. Cynthia requested language suggesting the waiver of Site Plan be allowed for 25 seats or less so long as it is in lieu of seating on the inside. The Town Board took that language out. Cynthia states that maybe she misunderstood. Bruce states that was not his recollection. Clarification will be obtained. Bruce states that capacity may not be increased. Cynthia suggests the language be put back in. The Board agrees to add the language back in again.

## **2. Discussion Regarding Wetlands Law Revisions:**

Cynthia states that Bruce had met with Mr. Kamenstein who came in with a list of discussion items. Cynthia picked up on the fact that we had forgot to add in language about the NSBTA trail work. Cynthia asks Sonja if she has any questions as to how to incorporate language about the trail work. Sonja states that she already incorporated language about the trail work. Cynthia states that the Board has two documents to review side by side. We have the highlighted copy which includes comments from Bruce and the Town Board, as well as a copy Sonja has brought with her tonight.

Referring to the un-highlighted version, Sonja states that on Page 1 a change was made in the header of Section 1 which reflects an incorporation of amendments to the Fee Chapter. The same change is reflected on

Page 1 in Section 3 for the Freshwater Wetlands.

Referring to Page 3 language was added in the Definitions of Best Management Practices.

Gary asks if these changes in the un-highlighted version are proposed. Sonja states yes. Cynthia prepared the other document with notes highlighted in red based on discussions from the Town Board Meeting. Gary asks if these changes have been incorporated into the non-highlighted version Sonja is going through now. Sonja states that most of them are addressed; however, some of them are not. Sonja will let the Board know which items have not been addressed. Cynthia states that her highlighted version shows where additional review work needs to be done. Cynthia did not re-write the Draft.

Sonja refers to Page 3 and states that a reference was added in the Definitions regarding a Buffer.

Bruce asks if there is any language that can be or should be in the Draft that recognizes that these changes have taken place over time, such as “as amended”. Sonja will take care of that. Gary states there may be a conflict if there is contradictory language and asks if there is one that takes precedent over the other. Sonja does not believe there will be contradictory language. Gary questions whether proposed applicants will need to look at several manuals. Cynthia states that a proposed applicant will pick the manual that is appropriate for the practice being done. For instance when we had the tree timber harvesting project on Hardscrabble Road, stormwater best management, and vernal pools best management practices were required. Gary states also forestry, sediment and erosion control would be required. Cynthia states that a pass was given because of the nature of the activity. Bruce believes that these items are specific to the activity being performed. The State tries to avoid these inconsistencies. The requirement for a special consultant is discussed. Charlotte states that she is worried that the NSBTA will be subject to all of these items which would be a large financial expense. Cynthia suggests the Board wait for this discussion until they are in that specific part of the Draft that talks about the requirement for Best Management Practices (BMP). These are just the Definitions. We have not talked about how they are going to be used.

Sonja refers to Page 4 and states a Definition was added in for an Environmental Monitor.

Sonja refers to Page 5 and states a Definition was added for Selective Tree Cutting. Cynthia asks if this Definition is used anywhere else. Sonja states no. There is a discussion about the diameter for Tree Slashing being 6-inches. Bruce states the diameter has to be consistent. Sonja will change the language from 4-inches to 6-inches. Selective Tree Cutting not applying to forestry operations is discussed. Bruce states it is hard to write a one-size fits-all document.

Sonja refers to Page 6 and states the definition of Wetlands Inspector has been revised.

Page 6 Item B on the highlighted copy is discussed as to whether or not the reference “lists” include FAC vegetation and if so, why. Bruce spoke with Joe Bridges about this and confirmed that at no time is there a singular determination.

Page 6 of 107-5(A)(5) on the highlighted copy has a comment requesting language be added stating “except where dictated by unique circumstances in consultation with the wetland inspector”. Sonja goes over the language she changed in the un-highlighted copy where the language proposed is “connected with a new subdivision plat and/or site development plan application. Bruce states if starting with a clean slate, we don’t want to see these closer than 50 feet. Bruce states that existing conditions, not new conditions is where this discussion began.

There is a discussion about 107-5(A)(8) as far as the stockpiling of manure. Bruce confirms this refers to

prohibited activities in a controlled area. Bruce states that there are places where manure is kept in dumpsters. Bruce states that Mr. Kamenstein brought up the need to check with WAC as to whether they promote/allow this. Bruce will do more research on this item. Cynthia asks if the Board of Appeals has specific requirements as to how these areas have to be prepped such as on a platform. Bruce states yes. Bruce does not believe the way it is most commonly done fits the Definition of manure stockpiling. There is discussion about the possibility of adding in a Definition. Robert agrees that a definition should be added.

There is a discussion about 107-5(c)(1)(c) & (j) in regards to selective tree cutting and language being taken out in one place and not in another. It will flow much better.

The NSBTA trails are discussed as mentioned on Page 9 of the un-highlighted version regarding excluded activities. Charlotte states that there needs to be a reference to new trails as well. Bruce agrees.

On Page 9, there is a discussion about adding in language regarding the routine maintenance of existing sediment basins in accordance with an approved wetland permit, establishing periodic future maintenance activities and procedures. The Board discusses whether there is a need for a Definition of a sediment basin. Bruce states it wouldn't hurt.

There is a discussion on the determination of permit type language has been added stating "the Building Inspector and/or the Wetlands Inspector".

The language referring to single-family lots has been removed.

There is a discussion about the use of heavy equipment not being considered as a minor wetland permit. Cynthia suggests language such as "bridges and other water controlled structures that do not intensify the use nor involve foundation work". Cynthia talks about coming up with some wording that will help to get through this minor permit section. There is a discussion about writing a separate item for the repair or replacement of bridges and a water control structure. There is a discussion of what is considered to be a water control structure. Dams are discussed. Cynthia states that the replacement of a dam should not be considered as a minor permit. Bruce states that there are a number of dams in Town that have been repaired. Bruce has always permitted the repairs to go forward based on the exemption. Cynthia states that if someone is replacing a bridge and not touching the foundation or footing, that would be considered a minor permit. The only question would be whether the foundation would have to be dug out. Bridges set back from streams are discussed. Bridges located in the buffer versus wetlands are discussed. Bruce refers to the Dubin Project and states the new footings are going in the buffer, not the river. Sonja will rework the language.

The power went out due to a storm. This discussion will be carried over to the October 6, 2010 Meeting.

### **3. Next Meetings:**

- Regular Meeting – October 6, 2010
- Work Session – October 20, 2010