

**PLANNING BOARD MINUTES**  
**WEDNESDAY, AUGUST 19, 2020**  
**REMOTE MEETING – 6:30 P.M.**

**Present:** Christa Schwintzer, Dave Thompson, Lisa Buck, Michael Costello, John Beckett, Phil Ruck, Jud McIntosh

**Absent:** Joe Sprecher

**Town Staff:** Kyle Drexler, Jessica Chadbourne

**Acceptance of the Agenda**

Phil Ruck asked for a motion to accept the agenda.

Motion: Lisa Buck moved to accept the agenda.

Second: Michael Costello

Mr. Ruck then asked Jessica Chadbourne to take a roll call vote. The vote to accept the agenda passed with seven for, none against.

**Approval of the Minutes of the July 15, 2020 Meeting**

Mr. Ruck asked for a motion to accept the minutes from the July 15th meeting.

Motion: Christa Schwintzer moved to accept the minutes.

Second: John Beckett.

Mr. Ruck asked for any discussion of, or corrections to, the minutes. Mr. Thompson asked that on page five in the last paragraph “dump trucks” be changed to “dump truck loads”. Mr. Ruck then asked for a roll call vote for the approval of the minutes. The vote to approve the minutes passed seven for, none against.

**Old Business**

**Item A: A continuation of a discussion on a proposed land use ordinance amendment to section 18-130, Excavation, removal and filling of lands.**

Mr. Ruck asked Kyle Drexler to update the Board on the corrections made to the proposed ordinance based on the Board’s previous recommendations. Mr. Drexler directed the Board to page 2 of the draft ordinance where most of the changes could be found. The first change was to the requirement for fill projects of over 100 cubic yards to be reviewed by the Planning Board. Right now all the districts are treated the same, with 100 cubic yards triggering site plan review. There was discussion by the Board as to whether in more rural districts that number could possibly be raised. Mr. Drexler amended the language such that earth moving in excess of 100 cubic yards would trigger site plan review in all zoning districts except the Forest and Agriculture district. Earth moving in excess of 200 cubic yards of material in the F&A would also necessitate site plan review by the Board. One thing Mr. Drexler noted that should be included, but was brought up after the draft was submitted to the Board, was that the 200 cubic yard limit for the F&A should pertain only to legally conforming lots of 4 acres (the minimum for the district) or above. For non-conforming lots smaller than the required 4 acres, the 100 cubic yard limit should be upheld.

The second revision since the last discussion was an exception (2e) regarding the maintenance of existing driveways and parking areas. This exemption would pertain to those instances when fill in excess of 100 cubic yards is being brought in for the purposes of maintenance only. Any expansion of existing areas would still necessitate review by the Planning Board. Subsection 3a of this section of the ordinance would still apply to projects falling under this exemption. Subsection 3a provides the town code enforcement officer with the ability to consult with the town engineer and to refer any projects, even those involving less than 100 cubic yards of fill, to the Planning Board when code enforcement deems additional review of the project to be necessary.

Mr. Ruck asked for comments from the Board. There were no comments from the board. Since it was still an open public hearing, Mr. Ruck asked for additional comments from the public as well. There were none. Mr. Ruck closed the public hearing. Mr. Ruck asked for a motion to recommend the ordinance to the Town Council.

Motion: Jud McIntosh moved that the board recommend to the Council the proposed land use ordinance amendment to section 18-130, Excavation, removal and filling of lands, plus the addition of requiring earth moving in excess of 200 cubic yards of material in the F&A be for legally conforming lots only.

Second: John Beckett

Mr. Ruck asked for a roll call vote. The motion to recommend the amended ordinance to council passed seven for, none against.

## **New Business**

### **Item A: A minor site plan review application by Emily McIntosh for a personal fitness training home business located at 25 Edgewood Drive in the Medium Density Residential district.**

A conditional permit was issued to Emily McIntosh during the spring shutdown, and now that Planning Board meetings have resumed Mrs. McIntosh has come before the board to present her official application for her home business. Mr. Ruck invited Mrs. McIntosh to introduce her home business to the board.

Before Mrs. McIntosh began her presentation Mr. McIntosh took a moment to recuse himself from voting on the approval of his wife's home business.

Mrs. McIntosh described her home business for the board. She is a physical trainer who meets one one one with clients in a workout space she created in her basement. She has no external signage or on street parking for the business. There will be only one to two cars coming to the property at any time, which can be accommodated by the existing driveway.

Mr. Ruck thanked Mrs. McIntosh and asked Mr. Drexler to add any additional information he had prepared about the proposal. Mr. Drexler noted that home businesses are an allowable use in all districts, but are generally reviewed by the planning board because of the potential for people to come to the home. The applicant did not propose any expansion of the structure so there was no impact to the property itself. Home businesses located on a minor street are allowed up to 10 vehicle trip ins per day, and given the applicant's assertion that only one or two cars will be coming to the property at a time at most, from a traffic standpoint the home business will not cause any adverse impact. There is also no anticipated issue with parking. The lot is legally conforming and the use is allowed.

Mr. Ruck pointed out, and Mr. Drexler confirmed that, given there is no actual construction taking place, there are a number of waiver requests that will need to be addressed before the

project can be approved.

Mr. Ruck asked for questions from the board. There were none. Mr. Ruck then opened the public hearing, and Mr. Drexler read into the record comments received from the public in the days leading up to the meeting. This includes comments received before the application was initially supposed to be reviewed, back in March, as well as comments received during the public notification period in August.

From Arlene Comstock:

I would like to once again state that my daughter (home owner) and I (resident) do not wish to okay any home business in our area. I hope you have my previous letter on file. It does not matter that this is a minor site plan review. Our neighborhood is still in opposition to this request. We have a neighborhood which is a very special place for our children to play and ride their bicycles in. There is only one way in and one way out. Our neighborhood is exceptional in the fact that we have only local homeowner traffic. This is not an area to set up any business. This is a family area and any business would significantly change the demeanor of the neighborhood. I encourage you to put deny this request. I am hopeful that we do not have to respond to any more requests of this nature. We love our neighborhood as it is. Our children are blessed to experience an area which takes us back in time for exploration, freedom to skateboard, ride bikes, roam without fear of traffic, etc. We hopefully hope that you honor this neighborhood request.

From W. Murray Bain:

My name is Murray Bain and I have lived for almost 60 years at 8 Edgewood Drive. Over these many years I have become aware of the nature of this development. We cannot attend this meeting because of current world conditions, my age (91) and personal physical and health conditions. We raised two children here where they had lots of wonderful playmates whose parents were always on the watch over them so that I know of no incidents that led to serious injuries to any of them! This is a lovely, quiet, peaceful neighborhood, filled with wonderful, friendly adults, too many cats, and a fluctuating population of tremendous children. Because it is within easy, safe walking distance to the schools, it easily attracts families. As the "Loop" developed it was occupied by similarly aged occupants so that as the children of the tenants moved away the "Loop" became a large number of four bedroom homes occupied by older citizens. But these occupants were gradually replaced by young families. And the cycle began again. Ask yourself why you chose to live here? In case you have forgotten, there is an increasingly familiar phenomena of "working out of home", multiple car families, and home care businesses developing in residential neighborhoods. This "Loop" has generally avoided these. However, over these 60 years the traffic here has increased, but generally speed has not been a problem. But outsiders frequently are not quite as observant! As is being experienced elsewhere, Orono families are taking in senior parents, many of whom having walking difficulties. I have noticed that many neighborhood children and their friends (and some adults) apparently do not know which side of the street to walk on when there are no sidewalks. To date this does not seem to be a problem. This is a world in constant change and generally for the better, but this is not one of them. Successful businesses have a habit of growing and generating traffic. The condition of the roads in the "Loop" is awful. These are my feelings and because of them I vote NO on the proposal.

From Louise Bain:

My name is Louise Bain and my home is located at 8 Edgewood Dr. My husband Murray and I feel very fortunate to have lived in our home for 53 years. I am now watching the 3rd generation of children growing up in our neighborhood. It has always been such a wonderful place for families to live being within walking distance to area schools never having to cross a major street! Parents knew that their children were safe when they played (sometimes in and around the street). Neighbors are aware of our precious children! I don't feel strangers driving into our neighborhood have this same awareness!! We also have many adult walkers - young and old - Murray now using his walker. I wish Emily the best in her new endeavor, but for the safety of our children and adults young and old I must vote NO.

Mr. Ruck asked if there were any additional public comments received. There were not. Mr. Ruck then invited Mrs. McIntosh to address any of the public's concerns. Mrs. McIntosh replied that the letters from the public echoed her own sentiments about living in a neighborhood, and she reassured the public that it was never her intention to grow her business to an extent that would negatively impact the neighborhood. Only a few people come to her house per week for training, and she does not see the business getting much larger than that.

Mr. Ruck thanked her for her contribution, and asked if the board or the public had any other comments or questions for Mrs. McIntosh. There were none, so Mr. Ruck closed the public hearing.

Mr. Ruck asked for a motion to approve the applicant's waiver requests. Christa Schwintzer moved that the board approve the applicant's request to waive the submission requirements. Lisa Buck seconded. Ms. Chadbourne took a roll call vote, and the motion to approve the applicant's waiver requests passed six for, none against with one abstaining.

Mr. Ruck read in the findings of fact for the projects (Attachment A). There were no objections or comments from the board for any of the findings of fact. He then asked for a motion to approve Mrs. McIntosh's application.

Motion: Christa Schwintzer moved to approve the minor site plan review application by Emily McIntosh for a personal fitness training home business located at 25 Edgewood Drive in the Medium Density Residential district.

Second: Dave Thompson

Mr. Ruck asked for a roll call vote. The motion to approve the application passed six for, none against with one abstaining.

## **Other New Business**

There was no other new business.

## **Discussion**

### **a. A review of the Planning Board By-Laws**

Mr. Drexler summarized his recommended revisions to the by-Laws, and pointed out to the board a few practices written into the by-laws that had fallen by the wayside. To begin with, the board chair and vice-chair are supposed to be re-elected annually. He also addressed the role of associate members as laid out in the by-laws: there are seven full members of the Planning Board

and two associate members. Associate members have to attend every meeting and can weigh in on discussions, but cannot vote unless a full member of the board is absent.

Mr. Drexler also proposed revisions to various uses of outdated language, and pointed out that one of the sections of the by-laws had been mis-numbered. So that would need to be corrected as well. He suggested that in section 4a, which states that a regular meeting of the Planning Board shall be held on the third Wednesday of each month, language be inserted regarding the ability of the Board to reschedule the meeting to a different week or day as needed.

Mr. Ruck addressed section 3c, which states that the Board shall designate a secretary either from its members or non-members. He asked Mr. Drexler if they needed to clarify that, since the position of secretary is currently held by a member of town staff, or if they could just leave it as is. Ms. Schwintzer recommended changing the section to indicate that the Community Development Administrative Assistant would hold the position of secretary to the Board.

Mr. Ruck asked if it was necessary to specify a time for the Planning Board meetings in the by-laws, or if it should be left general so that the Board can elect to change the meeting time as necessary or when possible. Mr. Drexler agreed that it could be worth putting in writing that there would be no specified time for meetings, but that a time would be decided upon for the month before the public notices were released. Ms. Schwintzer suggested they continue to leave anything about meeting times out of the by-laws and give the Board the liberty to schedule meetings as benefits the members schedules.

Mr. Ruck asked about the place in the Site Plan Review subsection where it references 10 days of notice, and whether that should be 30 days notice as with everything else. Mr. Drexler agreed that that should probably have been 30 days all along as it's necessary to give 14 days notice as is before applications can come before the Board. So 10 days of notice makes no sense. And Ms. Schwintzer pointed out that the language should be changed to reflect that applicants need to contact the Town Planner, not the Chairperson of the Board, before the required 30 days notice deadline, as it had been changed to Town Planner elsewhere in the document.

Lastly, Mr. Ruck asked about the Public Hearings section, and drew attention to the fact that the by-laws contain a very specific procedure for hearings to which the Board has not been adhering. Mr. Drexler admitted that the detailed procedure is very odd, but that he did not want to remove it without consulting the board. Ms. Buck suggested that the language could be changed to "the order of presentation may be as follows", which allows the description of the proceedings to remain, but permits the Chair to proceed as suits the situation.

Ms. Schwintzer pointed out, re: that same section, that 30 minutes seems like a long period of time per speaker. Mr. McIntosh suggested that the 30 minutes referenced in the by-laws seemed to refer to not an individual speaker but to a group of speakers, 30 minutes for those speaking in favor of the project, 30 minutes for those against the project. Ms. Schwintzer suggested that the language be clarified to prevent long-winded speeches in meetings.

Mr. Drexler suggested that adding "may" to the language, and designating 20 minutes per speaker, would give the board the option to adapt to the situation.

Ms. Schwintzer proposed a change to the membership section of the by-laws, where it says "when there is a permanent vacancy, the municipal officer shall appoint an individual to serve the unexpired term. In the past, when there have been vacancies and one of the associate members was not promoted to fill that spot, outsiders were appointed who did not have any familiarity with the Planning Board and its proceedings. So, Ms. Schwintzer suggested that in the future, when

there is a permanent vacancy, the senior associate member should be the one to serve the remaining unexpired term and be eligible for full member status after the partial term expires.

Mr. Ruck asked the board for their thoughts on Ms. Schwintzer's suggestion. The other members were in agreement.

Ms. Schwintzer went on to suggest that in section 3b, where it states that the vice-chairperson "shall call meetings of the Planning Board in the absence of the chairperson", additional language be added to allow the vice-chairperson to preside over meetings in the absence of the chairperson. Mr. Ruck agreed. Ms. Schwintzer also recommended adding a #4 clause to that section to permit a Planning Board member selected by the chairperson to preside over meetings in the absence of the chair and vice-chair.

In addition, Ms. Schwintzer directed the Board's attention to the Meetings Section, Item C, in which the Board recommends revisions to the Town's comprehensive plan. Now that the plan gets revised every ten years, she questioned whether the Board still recommends revisions to the Council. Mr. Drexler suggested it was worth leaving in there, as the Planning Board will likely have input the next time the plan is revised.

Michael Costello asked if, under the announcements section, public notices are still sent to the Penobscot Times, and whether that provides sufficient coverage for the Planning Board meetings. Mr. Ruck asked whether the staff should be considering additional publication options. Mr. Drexler agreed to look into additional options.

Mr. Ruck asked Mr. Drexler to provide the Board with a clean, updated copy of the by-laws for the next meeting. He then asked Mr. Drexler to brief the board on potential upcoming projects. Mr. Drexler replied that there was nothing official at that point for the September meeting, and he would let the Board know if there would be a meeting in September or not.

Mr. Ruck asked about other outstanding conditional permits that would need to be approved by the Board. Mr. Drexler confirmed that there was one, and he would need to reach out to the applicant about appearing before the Planning Board.

Mr. Ruck asked if there were any further comments on the by-laws. There were not. He asked if the Board wanted to vote on a vice-chair and chair or wait until the next meeting. The Board elected to vote.

Lisa Buck nominated Phil Ruck to remain as chair. Ms. Chadbourne took a roll call vote to approve Phil Ruck as chair of the Planning Board for another year. The vote passed six for, none opposed with one abstaining.

For the seat of vice-chair Christa Schwintzer nominated Jud McIntosh. Ms. Buck seconded the nomination. Ms. Chadbourne took a roll call vote to approve Jud McIntosh as vice-chair of the Planning Board. The vote passed six for, none opposed with one abstaining.

## **Adjournment**

Mr. Ruck asked for a motion to adjourn the August meeting of the Planning Board.

Motion: John Beckett so motioned.

Second: Lisa Buck

Ms. Chadbourne took a final roll call vote. The motion to adjourn the meeting passed unanimously and the meeting was adjourned at 7:40 pm August 19, 2020.

**Attachment A**

**PROPOSED FINDINGS OF FACT**

**EMILY MCINTOSH**

**SITE PLAN REVIEW**

**August 19, 2020**

Pursuant to Article VI, Section 18-177, of the Orono Code of Ordinances, the Orono Planning Board has considered the application of Emily McIntosh for an after-the-fact minor site plan for a home business located at Tax Map 27-1 Lot 47 in the Medium Density Residential District, and, based on all evidence presented by the applicant, reviewing agencies, town departments, and the public, found the following:

- 1. Requirements of the district:** That the project is allowable in the Medium Density Residential District, and that the proposal complies with the applicable dimensional requirements of the district.
- 2. Compliance with Town ordinances and codes:** That the project met the provisions of applicable regulations of the Town, including all pertinent sections of Chapter 18, Land Use Ordinance.
- 3. Utilization of the site:** That there is no new construction as part of the home business.
- 4. Traffic and pedestrian access:** That the home business expects only one or two vehicles to be at the home at any given time.
- 5. Storage of materials:** That there will be no exposed storage of materials.
- 6. Stormwater management:** That the project is not creating any new impervious cover.
- 7. Erosion control:** That there is no new construction and therefore erosion control measures will not be taken.
- 8. Water supply and sewage disposal:** That there is no change in water or sewer capacity needed.
- 9. Utilities:** That there is no change to any utilities.
- 10. Natural features:** That there will be no change to the natural features of the site.
- 11. Groundwater and surface water quality protection:** That the proposed project does not adversely impact either the quality or quantity of groundwater available to abutting properties or to public water supply systems.
- 12. Hazardous, special, and radioactive materials:** That the use of the site does not involve the handling, storage, or use of hazardous, special, or radioactive materials.
- 13. Shoreland relationship:** That the site is not within a shoreland area.
- 14. Solid waste management:** That no changes to solid waste management are proposed.
- 15. Historic and archaeological resources:** That the site is not known to contain historic or archaeological resources.
- 16. Financial capacity:** That the applicant had the financial capacity to carry out the project.
- 17. Noise and lighting:** That no additional noise or lighting were created due to the project.