

Planning Board Meeting Minutes

December 3, 2019

6:30 PM

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Chairman Scott Burns called the meeting to order at 6:30 PM.

**Members Present:** Scott Burns – Chairman, Peter Corey – Selectmen's Rep., Alan Theodhor, Frank Lombardi, Steve LaRoza - Alternate and Joyce McGee – Secretary.

**Members Absent:** Tim O'Neil

**Public Present:** Richard Harris Sr., Richard Harris Jr., Jillian Hammond and Daniel Trusca

**Minutes:** A motion was made by Peter Corey to accept the November 12, 2019 minutes as presented, seconded by Alan Theodhor. All in favor, motion carries. APPROVED

**Consultation:**

**Harris, Richard – Boundary Line Adjustment, Land Off Hall Road, Tax Map 211 & 218. Site Plan Review to create two house lots within Dick's Country Village Mobile Home Park, Tax Map 218.** Mr. Harris was present to advise that no Boundary Line Adjustment was going to happen at this moment. He would like to propose adding two more mobile homes on Lot 53, Tax Map 218. Phase I is complete with the additional 4 mobile homes in place. Mr. Harris stated that the Town Water & Sewer Department have both signed off on connecting to the system.

At this time, Alternate Steve LaRoza was appointed as a voting member by Chairman Burns.

Peter Corey felt it would be only fair to have the Board of Selectmen discuss the Sewer Agreement with Mr. Harris. Mr. Harris stated that no solids are to be discharged into Town system, they are now hauled away with gray water only going through town system. He felt the Town was ahead of the game by not paying for solids.

Mr. Harris said he has 40 homes, 2 apartments and 2 houses within the park. Frank Lombardi asked that an updated Site Plan be provided. Mr. Harris would like an Expansion of Use for the two mobile homes. The Board needs to determine if they want it part of Phase I.

Frank Lombardi, if you modify plan then it's an expansion. Secretary McGee read Development Code: 2.4 Final Plan (g): major changes shall be approved only by the Planning board, and must follow the same review and public hearing process required for the approval of design review. (3) An increase of greater than one percent (1%) in the approved number of residential dwelling units.

Mr. Harris was directed to fill out the application for a Change of Use/Site Plan and that a discussion of the Sewer Agreement needs to take place with the Board of Selectmen.

**Old Mill Studio – 36 King Square, Tax Map 103 Lot 048:** Mr. Daniel Trusca was present, he would like to open up a bakery and a restaurant, along with educational programs. He would like this to be a positive

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thing for the community, to have kid's movies, senior meals etc. Hours would be like 6:30 AM to 7:00 PM with Sunday brunch from 10:00 AM to 2:00 PM.

A Notice of Decision for a Change of Use was given on 12/13/2016 for a Bakery/Snack Shop with a condition that approval from Fire Chief on fire safety codes had been met. Peter Corey didn't feel that another permit was needed as same use but life safety codes needed to be reviewed with an inspection by Fire Chief since alterations were done. Mr. Trusca agreed as he had concerns as well. He would like the building to be more commercial than a rental property. **A motion was made by Alan Theodhor to allow the same application with the condition that approval is given by the Fire Chief, seconded by Peter Corey. All in favor, motion carries. APPROVED**

**Other Business:**

**Septic Design(s): Waystack, Philip & Beverly -153 Mountain View Road, Tax Map 217 Lot 013:**

Secretary McGee advised that she had signed an amended septic plan as tank needed to be moved once again due to ledge.

**Demolition: Stiles, Robert – 15 Tamarack Road, Tax Map 230 Lot 062:** To remove an 8'x29' side porch attached to house. All shingles to dump with clean material to be burned on site. **A motion was made by Frank Lombardi to approve the application as presented, seconded by Alan Theodhor. All in favor, motion carries. APPROVED**

**Development Permit(s):**

**Morrison Hospital Association – 6 Terrace Street, Tax Map 102 Lot 114:** Secretary McGee advised that the gazebo did not meet the setbacks, a variance is needed. Still waiting to hear from them regarding this issue and papers were given to merge Lots 113 & 114. PENDING

**Pagnotti, Irma – 111 Old East Road, Tax Map 213 Lot 001:** Secretary McGee advised the Board that the house was completely demolished but permit stated only the roof and interior were going to be removed and rebuilt. Mr. Harris spoke that once the contractor started it was found that the current structure would not support the renovation/addition. Board would like a letter sent asking for a revised application to the work being done.

**Gooden, Arnold – 13 Prospect Street, Tax Map 101 Lot 005:** Secretary McGee advised that Mr. Gooden was granted a variance to build an 8'x24' lean to off his garage by the Zoning Board of Adjustment. This was an After-The-Fact permit.

Several letter of inquires went out with no response, the Board directed Secretary McGee to resend the letters certified with a 10-day response time.

**Application Fees:** Secretary McGee asked if a Development Permit could be refunded for a project that never was approved as needed a variance and applicant never proceeded. Board agreed fee should be returned.

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**Correspondence:**

-Letter from State of NH - Manufactured Housing Installation Standards Board requiring anyone installing a manufactured home and/or concrete pad to be licensed by the Manufactured Housing Installation Standards Board. This will be added to the Single Family criteria list. Mr. Harris felt that a conditional approval should be given for inspection.

-Steve LaRoza, Tim O'Neil and Secretary McGee attended a Webinar on Regulating Short-term Rentals in NH. It was very informative but it was realized that enforcement is key to regulating this growing rental business. (see attached NH Supreme Court Case) Mr. Harris asked about pooling resources with other Towns. Peter Corey felt it was a place the town needs to get too, it's a value to have it.

-Letter from Mapping and Planning Solutions re: Final Master Plan. Three hard-copies with CD were given to the Planning Board. (see attached)

**Development Code proposed changes:** The Board worked on the "Village District" area map. Revisions were made and Secretary McGee will get a revised map printed. The Board felt this was a good start and down the road changes could be made if necessary.

**Other Business:**

-Peter Corey advised that the Board of Selectmen would like the Planning Board to send a letter to the Triangle Dairy Bar (owner MBBM Lufkin LLC) asking if the vehicles being parked there are being utilized as part of the Dairy Bar, if not then need to come for a Change of Use. Board members agreed that this is not to be a parking lot for overflow from the garage.

-Peter Corey asked that any Board members that are available for the December 16, 2019 Selectmen's Meeting to attend as this is the Public Hearing for the increase in fees. If questions come up on why the increase, then members can speak on why it was important to do so.

-A letter of intent needs to be sent to Melhem Enterprises Retreat on property located on Burns Lake as not a residence.

-Board members discussed Airbnb's and how they could be effecting septic systems. Chairman Burns stated that State design criteria for septic systems are based on 2 people per bedroom. Concerns with life safety codes were brought up. Mr. Harris stated it's not about stopping them but they should be taxed differently, putting a strain on housing.

**A motion was made by Frank Lombardi to adjourn the meeting at 8:16 PM, seconded by Peter Corey. All in favor, meeting adjourned.**

Respectfully submitted by:

  
Joyce A. McGee – Secretary

Scott C. Burns - Chairman





## State of New Hampshire

### OFFICE OF PROFESSIONAL LICENSURE AND CERTIFICATION DIVISION OF TECHNICAL PROFESSIONS

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JOSEPH G. SHOEMAKER  
Director

DAVID L. GROSSO  
Executive Director



November 7, 2019

#### Manufactured Housing Installation Standards Board

Dear Code Enforcement Officer,

Pursuant to RSA 205-D the state of New Hampshire requires anyone who installs a manufactured home and/or concrete pad to be licensed by the Manufactured Housing Installation Standards Board. There are additional requirements of local enforcement agencies to inspect each installation to ensure compliance with the installation practices consistent with RSA 205-D and the board's installation rules. All regulations can be found at the board's web page <https://www.oplc.nh.gov/housing-installers/index.htm>.

To better assist the board when reviewing documentation presented to it, the board is asking local enforcement agencies to list the installer's name and license number on the certificate of occupancy issued after the installation's satisfactory inspection.

Your assistance with this request is greatly appreciated. Please feel free to contact Diana Craigie at [diana.craigie@oplc.nh.gov](mailto:diana.craigie@oplc.nh.gov) with any questions.

Sincerely,

Rick Wisler

Administrator III

Real Estate Commission and Boards of Manufactured Housing, Home Inspectors, Home Installers, and Court Reporters

# Short Term Rental Use of Property Zoned Residential is Prohibited by a Zoning Ordinance Definition that Such Use is a Prohibited Transient Occupancy

*Working Stiff Partners v. Portsmouth*

**New Hampshire Supreme Court Case No. 2018-0491**

Friday, September 27, 2019

Working Stiff Partners, LLC (plaintiff) appealed a decision of the Portsmouth ZBA that prohibited the use of a single-family home for short-term rentals. Plaintiff owns adjacent properties in Portsmouth's General A Residence District; one property is an owner-occupied home, the other is a four-bedroom home that plaintiff had renovated and began renting through Airbnb. Plaintiff's Airbnb listing offered the four-bedroom home for daily rental, and for family parties, wedding parties and corporate stays. City Code Enforcement Officials issued a cease and desist order that the home could not be used for short term rentals. Both the Code Enforcement Officials and the Superior Court interpreted the Portsmouth Zoning Ordinance as prohibiting the use of the home for daily rentals as that constituted a transient occupancy that was expressly excluded as a permitted use in the General A Residence District.

On appeal to the NH Supreme Court, plaintiff argued that it was an error to interpret the Portsmouth Zoning Ordinance as not permitting short-term rental of the property as a principal use. After reviewing the relevant definitions in the zoning ordinance, the Court concluded that plaintiff's use of the property for daily rentals to paying guests constitutes a transient occupancy like a hotel, motel, rooming house, or boarding house. Because the ordinance expressly excludes such transient occupancies from the definition of a dwelling unit the Court ruled that providing short-term rentals to paying guests on a daily basis, is not a permitted use affirming the decision of the Superior Court. The Court also ruled that the definitions found in the Portsmouth Zoning Ordinance were not unconstitutionally vague and gave plaintiff fair notice that a short term rental use of the property was not permitted. Left unresolved by the Court's decision is whether a short-term rental use could be considered a permitted, accessory use of the property.

## **COURT DECISION AVAILABLE HERE!**

Additional Information:

**Practice Pointer: It is possible to prohibit the use of residentially zoned property as a short-term rental use, provided the zoning ordinance clearly defines what are considered prohibited transient uses of residential dwelling units.**



**JUNE GARNEAU**

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November 20, 2019

Scott Burns  
Planning Board Chair  
Town of Whitefield  
The Whitefield Planning Board  
56 Littleton Road  
Whitefield, NH 03598

Dear Scott and Members of the Whitefield Planning Board,

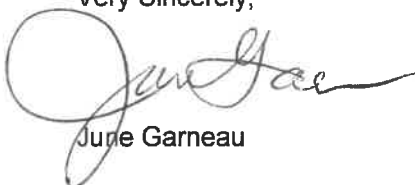
Thank you for choosing Mapping and Planning Solutions (MAPS) to assist in the preparation of the Whitefield Master Plan, 2019.

Per our agreement, I have provided three hard-copy copies of the Whitefield Master Plan (delivered to the Town Office on 11/18/19). These plans each contain a CD which includes a digital copy of the plan. A complete copy of the plan, both digitally and in hard-copy format will also be kept in the offices of Mapping and Planning Solutions.

It has been a pleasure working with the Town of Whitefield on this very important project and I thank you for putting your trust in me and my company. Special thanks are given to the entire Planning Board for their hard work and diligence in getting this project completed over the past couple of years.

Once again..."Thank You"...I looking forward to working with the town on other projects in the future!

Very Sincerely,



June Garneau

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Emergency Operations  
Planning

Hazard Mitigation  
Planning

GIS Mapping  
& Training

Plan Review &  
Monitoring

Community Wildfire  
Protection Planning