

**TOWN OF THORNTON
PLANNING BOARD**

Approved on: Feb 16, 2023
PB Initials: ND
Rec'd by Town Clerk on: 2/21/23
Town Clerk Initials: ACQ

**Planning Board Meeting Minutes
Thursday, January 19, 2023**

CALL TO ORDER – PLEDGE OF ALLEGIANCE:

Chairman Nancy Decoteau called the meeting to order at 6:00 p.m.

ROLL CALL:

Members present at Town Hall: Nancy Decoteau, Chairman; Steven Babin, Vice-Chairman
Frank Freeman; Peter Laufenberg; Donna O'Donnell; David Rivers; Cynthia Schofield; Kathy
Menici, Planning Director (via Zoom); Kerrin Randall, Board Assistant (via Zoom)

Alternates present at Town Hall: Jack Gaites

Others present via call-in (*partial names are as they appeared via Zoom*): Bob Gallagher,
Kevin McKenna

Others present at Town Hall: Shawn Magoon, Patrick Sutton, Allyson Rand Sutton

APPROVAL OF MINUTES:

Mr. Babin stated that he feels there are substantial conversation points missing from the minutes of
December 15, 2022. Ms. Schofield commented that there is some conversation that is not included in
the minutes.

MOTION: "To table the minutes of December 15, 2022 until the February 16, 2023 meeting."

Motion: N. Decoteau

Second: D. O'Donnell

Discussion: Mr. Babin asked how he would obtain audio recordings from the Planning Board
meetings and Ms. Randall stated he would need to submit a written request and pay a fee as
noted in the fee schedule.

Vote: 7 YES - 0 NO - 0 ABSTAIN

Motion passes.

COMMUNICATIONS:

Drummond and Woodsum Rate Update

Ms. Decoteau reviewed the 2023 rates for legal counsel and asked if there were any questions; there
were none.

PRELIMINARY BUSINESS:

Master Plan Committee – Update

Ms. Decoteau stated she attended the discussion and wanted to commend the Committee for how well
they worked and facilitated the discussion.

Ms. O'Donnell reviewed that the discussion on recreation and public facilities went very well, with 25
people in attendance. She stated the next discussion will be on Saturday, January 28, 2023 from 10:00
am – 12:00 p.m. at the school where zoning and development will be the topic. Ms. O'Donnell stated
she will update the Board following that discussion.

55 Legislative Changes 2022 – Final Version

56 Ms. Decoteau reviewed that Planner Menici drafted a memo regarding legislative changes, and the
57 Board reviewed the changes. Mr. Babin commented that the findings of fact requirement has always
58 been in place regarding denials but is now required for approvals as well.

59
60 **HEARINGS:**

61 Continued APPLICATION/PUBLIC HEARING – Site Plan Review; US Route 3 [Map 227, Lot 2] Kevin
62 Dorsey for White Mountain Escapes. Construct a residential cluster condominium subdivision; 18 single
63 family homes with shared common land.

64
65 Ms. Decoteau reopened the hearing at 6:10 p.m. and reviewed that a request from Mr. Dorsey has
66 been received. The request asks that the hearing on his pending application be continued until the
67 February 16, 2023 meeting. Mr. Dorsey also waives his right to a decision with 65 days of acceptance.

68
69 Ms. Decoteau reviewed that Mr. Dorsey is also requesting the Board authorize Steve Keach, to begin
70 the 3rd party review process as soon as revised application materials are prepared in order to have a
71 meaningful discussion with the Board at the February 16th meeting.

72 **MOTION: “To authorize Steve Keach, to begin the 3rd party review process as soon as revised**
73 **application materials are prepared.”**

74 **Motion: P. Laufenberg**

75 **Second: D. O'Donnell**

76 **Discussion:** Ms. Schofield commented that there was talk of Keach-Nordstrom having a conflict
77 with the parcel, as they had prepared materials for it in the past. Mr. Freeman clarified that the
78 former owner of the parcel hired Keach-Nordstrom, not Mr. Dorsey. Ms. Schofield stated she
79 would like something in writing stating this. Ms. Schofield and Ms. O'Donnell stated they will
80 abstain from the vote, as they are abutters.

81
82 **Vote: 5 YES - 0 NO - 2 ABSTAIN**

83 **Motion passes.**

84
85 **MOTION: “To continue the public hearing for Site Plan Review; US Route 3 [Map 227, Lot 2]**
86 **Kevin Dorsey for White Mountain Escapes to the February 16, 2023 meeting.”**

87 **Motion: P. Laufenberg**

88 **Second: F. Freeman**

89 **Discussion:** Ms. Schofield and Ms. O'Donnell stated they will abstain from the vote, as they are
90 abutters.

91 **Vote: 5 YES - 0 NO - 2 ABSTAIN**

92 **Motion passes.**

93
94 **OTHER BUSINESS:**

95 Discussion of Proposed Amendments to Site Plan and Subdivision Regulations

96 **i. Floodplain Amendments**

97 Ms. Decoteau reviewed the proposed amendment for Floodplain Ordinance (FPO) and the memo that
98 Planner Menici prepared. Ms. Decoteau stated the proposed amendment is required for the regulations
99 to remain current.

100
101 Ms. Decoteau reviewed that public hearings will need to be held to amend the site plan and subdivision
102 regulations, and the hope is to have one (1) public hearing where all amendments to both sets of
103 regulations can be held on the same day.

104
105 Mr. Rivers stated he attended a webinar on watershed and floodplains and questioned if a new
106 floodplain study will make a difference to the proposed FPO, and do we know when the floodplain study
107 will be done.

Planner Menici stated that a floodplain study is an activity done by FEMA to produce new floodplain maps and does not affect the changes being proposed to the ordinance. She stated the amendments being proposed deal with compliance with the national flood insurance program, and the mapping that FEMA is doing is in the final stages; this will not have any impact on what the Board is discussing tonight. Mr. Rivers thanked Planner Menici for the clarification.

MOTION: "To include the proposed amendments to the FPO in the site plan and subdivision regulations."

Motion: F. Freeman

Second: C. Schofield

Discussion: Mr. Babin commented that he is not a proponent of the national floodplain insurance program.

Vote: 6 YES - 0 NO - 1 ABSTAIN

Motion passes.

ii. Exemption of Certain Projects from Site Plan Review

Ms. Decoteau stated that RSA 674:43, IV, grants the Board the authority to exempt certain types of projects from site plan review. She commented that this discussion stems from the determination that some structures are ancillary to an already approved site plan. Ms. Decoteau reviewed a sheet containing examples of exemptions from site plan from other towns.

Ms. Decoteau stated that the ability to exempt Short Term Rentals (STR) from site plan review at this time is within the Board's purview as it relates to the site plan regulations. She reviewed that, currently, STR is an allowed use in all zones and therefore requires site plan review, but the Board has yet to determine what to do with applications that are submitted. Ms. Decoteau stated legal counsel does not recommend the staying of any more applications for STR that come before the Board.

Ms. Decoteau stated until the courts come to a decision regarding short term rentals, one possibility at this time is to exempt single-family homes being used as one (1) rental unit from site plan review in the regulations. If there are multiple units in a house being used as individual rentals, site plan would be required.

Mr. Freeman asked who says STR need site plan review, as he does not see them as commercial uses and Ms. Decoteau stated that the outcome of court cases regarding STR will determine if they are commercial uses.

Mr. Freeman questioned why anything had to be done with STR, and Mr. Laufenberg asked why property owners think they need site plan review. Ms. Decoteau responded that correspondence from the NH Municipal Association and other resources say that the use of STR is non-residential; that is the premise as to why the conversation is being had.

Ms. Decoteau reviewed that if a site plan is approved, it's forever and Mr. Freeman stated that the two applicants for STR site plan only came because they were told to. Ms. Decoteau stated that the need for site plan review was not rescinded, but the notice requiring it was taken down from the town website.

Mr. Laufenberg clarified that the BOS posted the notice for site plan for STR at the directive of the Planning Board. Mr. Laufenberg stated the notice was taken down at the request of the Planning Board after the applicants for STR appeared. Ms. Decoteau commented that the notice being taken down does not change the fact that the current Zoning Ordinance requires STR to obtain site plan review.

Planner Menici stated that she has been trying to find an easy solution so that the debate on STR can stop. She stated she has spoken with counsel at length about this, and the proposal, at this time, is to have single-family homes being used as one (1) STR be exempt from site plan review. She

commented that this is a temporary solution that can be done within the site plan regulations until such a time that the courts decide on STR.

Mr. Freeman asked if condo units would be considered a single-family home and Planner Menici stated yes, as long as it was being rented as a single unit.

Planner Menici commented that after conversation with Mr. Laufenberg, it was understood that the BOS was looking to "tighten up" the existing ordinances for disturbances. Mr. Laufenberg stated the BOS has discussed and agreed to review the current ordinances.

Mr. Babin commended all those working on this topic and commented that he has made his opinions on STR clear. He stated the main issue is enforcement and asked Mr. Laufenberg, as ex-officio, relay to the BOS that the current ordinances in place need to be enforced. He commented that he has asked numerous times for evidence from the Police Department that STR are causing disturbances and he has not received them. Mr. Babin commented that there have been instances where the PD was told not to enforce ordinances, and there is no merit to creating new ordinances if the ones in place are not being enforced.

Mr. Laufenberg stated it is not fair to the PD to say that they don't enforce the Town ordinances, and Mr. Babin stated the PD does a great job, but he has been told that the PD has been directed not to enforce certain things.

Ms. Decoteau stated the Planning Board does not deal with enforcement and returned to the topic at hand. Mr. Freeman commented that he is in favor of the suggestion.

Mr. Rivers asked what would happen if a single-family home advertises as one (1) rental, but there are illegal bedrooms and other units that are never discovered because the house was exempt from site plan review.

Planner Menici stated someone would need to report the illegal units, as the Town does not conduct home inspections unless it is reported. Mr. Rivers commented that the Town is reactive, not proactive and Mr. Laufenberg clarified that there is a process for reporting concerns and the BOS investigates all concerned citizen forms submitted.

Mr. Rivers stated if single family homes are exempted nothing will prevent people from doing whatever they want and Mr. Laufenberg stated they would only be exempt from site plan review, not the zoning ordinance.

Planner Menici stated she shares Mr. Rivers' concern for the safety of people in the rentals, but the concerns are building code and permit issues and unfortunately there is no mechanism in place in Thornton to enforce building code issues. Mr. Rivers stated that by exempting single-family homes, the Board is encouraging people to abuse the property.

Mr. Rivers stated the majority of problem rentals in town are single-family homes being used for STR. He commented that there are no reports on the frequency of issues that come from these single-family rentals and statistics need to be gathered to show the frequency of problems and concerns from the STR.

Discussion on how the internet has exacerbated the rental process occurred.

Mr. Babin stated he feels that exempting a group of people (single family homeowners) is a bad idea and sends a bad message. He stated people coming into town lack civility, and enforcement of the current ordinances needs to be done.

217 Ms. Decoteau stated the proposed exemption is only until a decision is made by the courts and would
218 only exempt single-family homes that are one (1) rental from site plan review. She commented that this
219 feels like the best solution to get STR off the Planning Board's agenda and would fall to enforcement
220 when complaints arise.

221 Mr. Laufenberg asked what happens when someone calls the planning office and asks what they need
222 to do if they have a STR. Planner Menici stated there is not clarity on this issue, hence the reason she
223 spoke with legal counsel to find a solution for the time being. Discussion continued.
224

225 Ms. Decoteau took a poll of members to gage their thoughts on exempting single-family homes used as
226 STR from site plan review at this time.
227

228 Mr. Laufenberg stated he is not in favor of exempting, but thinks it's needed in this case. He cautioned
229 that if exempted, others with single-family home rentals (like Owl's Nest) may find it inequitable.
230

231 Ms. O'Donnell stated she is in favor of exempting single-family homes used as STR from site plan
232 review at this time, though she feels that the word 'exempt' is a very strong word that people may find
233 issue with.
234

235 Mr. Freeman stated he is in favor of exempting single-family homes used as STR from site plan review
236 at this time.
237

238 Mr. Babin stated he is not in favor of exempting single-family homes used as STR from site plan review.
239

240 Ms. Schofield stated she agrees with Ms. O'Donnell in that the word 'exempt' is very powerful and
241 questioned how the change in who needs to submit site plan and who does not based on whether or
242 not they are considered a commercial entity.
243

244 Ms. Decoteau reiterated that only single-family homes being rented as one (1) unit would be exempt
245 from site plan review for the time being. As STR is a permitted use on all zones, as it stands currently,
246 all STR require site plan review.
247

248 Mr. Babin stated that he doesn't see any way that a person owning property in the Town of Thornton,
249 that wants to alter the use of their building today, is compelled to come in before the Board. He stated
250 that by saying that single family homes are exempt, it is going to create a problem moving forward to
251 regulate problems that exist. Mr. Babin stated the Board is not empowered to require site plan review
252 for a place that doesn't change their walls.
253

254 Planner Menici stated that was not true; if something is not in the ordinance it is not a permitted use.
255

256 Mr. Freeman commented that everyone in the Town of Thornton has been violating this use since 1970
257 when the zoning ordinance was adopted.
258

259 Mr. Babin stated that the 'letting of a room' and 'boarding' are widely held as being STR.
260

261 Ms. Schofield commented that there was a room full of people here when the public hearing regarding
262 STR regulations was brought up and it is clearly a problem. She asked why the Planning Board keeps
263 being put in the position to make this decision and suggested a partnership with another board to get a
264 clear direction on what needs to happen.
265

266 Mr. Rivers stated he feels that Board should not be doing anything regarding STR at this time, and
267 should continue as they have been, with no site plan review.
268

269 Ms. Decoteau stated that legal counsel did not recommend staying site plan applications for STR and,
270 in her opinion, the Zoning Ordinance currently requires all STR to have site plan review, but the

271 Planning Board has the ability to amend site plan regulations to "exempt" single family homes from that
272 requirement for now. She stated what the Board does has to be supported in the regulations.
273

274 Ms. Decoteau stated the issue of STR is in the courts and it is unknown what the decision is going to
275 be. She reviewed that the BOS has stated that they want to 'beef up' ordinances currently in place as
276 they handle enforcement. She stated all the Board can do at this time is to put something in the site
277 plan regulations; to act responsibly, the Board needs a clear path to follow.
278

279 Ms. O'Donnell commented that the exemption proposal gives direction to people who come in. After
280 more discussion, Ms. Decoteau stopped the conversation. She stated that it is clear that nothing is
281 going to be decided tonight, as the discussion is getting heated. Ms. Decoteau asked that Board
282 members take time to review the documents presented and think about the conversations had at this
283 meeting in order for it to be discussed at the February meeting.
284

285 **iii. Determination of Application Completeness**

286 Ms. Decoteau reviewed language from the subdivision regulations, Section III, D. 3:
287 *'An incomplete application filed by the applicant will not be formally accepted by*
288 *the Board nor will notices of a public hearing be mailed, posted, or published.'*
289

290 Ms. Decoteau stated the Board has not been following this and a concept to fix it needs to be
291 determined. Mr. Freeman suggested that after the application is submitted, delay the public hearing for
292 a month.
293

294 Mr. Laufenberg commented that incomplete applications usually take two (2) months now to get
295 through the review process.
296

297 Ms. Decoteau stated that Planner Menici does not want to be the only one that determines if an
298 application is complete before it goes before the Board for public hearing. She suggested a smaller
299 group comprised of Board members and Planner Menici meet following the submission deadline to
300 review for completeness.
301

302 Mr. Laufenberg stated that historically, everything has been done at once. He stated that he has issue
303 with notices going out to abutters prior to the application being reviewed and when the public hearing is
304 held, those abutters are unable to speak if the application is incomplete; it is not fair to them. Mr.
305 Laufenberg stated that having a small group review an application for completeness is not the right
306 path, as all Board members should be present for discussion.
307

308 Mr. Babin stated there has been a shift in how this Board looks at property, and they are now working
309 towards a personal property type of Board management. He stated the applicant should be able to
310 determine the completeness of their application for their private property. Mr. Babin stated the property
311 owner has dominion over their property and they should be coming before the Board to see if they are
312 in violation of the zoning ordinance.
313

314 Mr. Freeman stated the checklist used to determine completeness has been used for at least 30 years
315 and is not new. He commented there needs to be a format for all property owners to follow and they
316 cannot have people coming in with their own way of determining completeness.
317

318 Discussion followed regarding changing dynamics and how the determination of completeness would
319 be done.
320

321 Ms. Decoteau commented that she agrees that the whole Board should be involved for transparency
322 and reviewed that the whole Board agrees that the determination of completeness on an application
323 needs to be done prior to the scheduling of a public hearing.
324

Ms. Decoteau asked that language be drafted for the site plan review regulations that outline how the review process for applications will be done moving forward; determination of completeness at one (1) meeting, and the public hearing scheduled following determination of completeness at another meeting.

iv. Design Review

Ms. Decoteau reviewed RSA 676:4, II:

'...grants the Board the authority to adopt a process for Preliminary Consultations and Design Review. Both are non-binding discussions between the Board and an applicant. A Preliminary Consultation is limited in scope and allows the Board to discuss the basic concept of proposal and a general discussion of the Zoning Ordinance and land use regulations as they relate to that proposal. Design Review allows the Board to have a more in-depth discussion regarding the technical details of the proposal.'

Ms. Decoteau reviewed that preliminary consultations are general discussions about a project and by adopting design review, it would allow interaction and more in-depth conversation on technical aspects that cannot be talked about during a preliminary consultation.

Ms. O'Donnell stated during preliminary consultations it feels like the applicants take what the Board says and assumes they are all set to move forward, as that is what they want to hear. She commented that adding a more in-depth discussion without the public being present seems like a lot.

Mr. Freeman stated he feels that the preliminary review process should remain as it is without adding design review.

Ms. Decoteau commented that the Board needs to do better in keeping the discussion during preliminary consultations general, as sometimes the conversation gets into the technical aspects.

Ms. Decoteau took a poll of members to gage their thoughts on adding design review as an option for applicants.

Ms. Schofield stated it does not need to be added.

Mr. Laufenberg stated it could be added as an option for applicants and a clear definition of what design review is needs to be stated.

Mr. Babin stated he is not in favor of either preliminary consultation or design review. He stated the application has a right to both and if someone comes in for a preliminary consultation, he doesn't want to tell them they need design review.

Planner Menici stated the statute is clear on the difference between the two, and they are both optional. There is no requirement that either need to be done. Mr. Babin asked if someone came in now for a design review, the Board would deny them that option and Planner Menici stated yes, as design review is not currently an option per the site plan and subdivision regulations.

Mr. Babin asked what resources does the Board have that could assist an applicant achieve their goals with a design review. He stated the Board does not have the technical ability to perform a design review, and a third party would need to be brought in.

Mr. Freeman reviewed that the design review is where the applicant comes to talk about their project and if the Board feels that they should have a third-party review, then the Board will make that suggestion.

Ms. Decoteau stated a design review just means that the applicant can give more detail than in a preliminary review and Mr. Babin argued that if someone comes in for a technical review, the Board

says it's good, and the applicant builds without sprinklers and the house goes up in flames, it would be on the Board.

Planner Menici commented that when Mr. Dorsey first came to the Board to discuss his plan at a preliminary consultation, the issue of a ROW came up; under preliminary consultations, it could not be discussed. She reviewed that ROW can be discussed during a design review. She stated that design review is just another option available for applicants.

Mr. Freeman stated he thinks design review could be offered as an option.

Ms. O'Donnell stated she is unsure if design review could be offered as an option at this time.

Ms. Schofield commented that after hearing more about the process, she thinks design review could be offered as an option.

Mr. Rivers stated design review could be offered as an option.

Ms. Decoteau asked that language be drafted to include design review as an option for the site plan and subdivision regulations. Definition of a minor site plan was also requested, and Planner Menici commented that she will work on that as well as the additional language requested.

Rules of Procedure

- **Discussion of Proposed Amendment Regarding Signing of Plans/Mylars on Behalf of the Board**

Ms. Decoteau commented that state statute allows for any member of the Planning Board to sign an approved mylar in the event that the Chair or Vice-chair are not available to do so, and that language should be added into the Planning Board Rules of Procedure (ROP) to reflect that.

Mr. Babin questioned if the BOS has an ROP and asked why this Board finds the need to create more rules. Ms. Decoteau stated it needs to be noted in the ROP if the Board is going to put it into practice.

Mr. Babin commented that the Town is boxing itself in by creating more regulations and if it is a state statute, why does it need to be noted in the ROP. Planner Menici stated the addition of the language would clarify the procedure for signing mylars if the Chair or Vice-chair are not available.

Planner Menici stated legal counsel has recommend that the language is added into the ROP, as he is the one that has to defend the Board in court. Mr. Babin commented that he has never seen Attorney Serge in court.

- **Language Regarding Virtual Meetings**

Ms. Decoteau stated that updated language regarding virtual meeting attendance needs to be added to the ROP. Ms. Randall commented that she has language that she will share with Ms. Decoteau for review.

Mr. Babin asked that language be added to the ROP stating that all meetings will be recorded and posted.

Ms. Decoteau stated this discussion has already been had and a decision rendered.

Mr. Laufenberg commented that he has never seen the ROP for the Planning Board and Mr. Rivers stated he has not either. Ms. Randall stated she will send out the ROP.

433 • **Filing Period for Elected Officials**

434 Ms. Decoteau reviewed that the filing period for elected officials is January 25, 2023 – February 3,
435 2023. She reviewed that there are two (2) terms on the Planning Board expiring and are up for
436 election.

437
438 Mr. Rivers asked if any Board members lived next to a single-family home that is used as a STR where
439 there are more transients than residents. He stated he does, and he doesn't think that anyone on this
440 Board understands how much of a nuisance it is. Mr. Rivers stated he has issue with fireworks being
441 set off outside of his house and not knowing the type of people that are in the house next to his.
442

443 Mr. Rivers stated no one on the Board understands the impact STR have on residents, and they do not
444 appreciate the concerns of those who live in these neighborhoods. He stated members of the Board
445 don't understand and are ignorant to the fact that STR are a major problem, and they should not be
446 voting on how to handle them.
447

448 Ms. Decoteau thanked Mr. Rivers and commented that she appreciates the fact that he felt comfortable
449 enough with the Board to share his thoughts.
450

451 **ADJOURNMENT:**

452 **MOTION: "To adjourn at 8:23 p.m."**

453 **Motion: P. Laufenberg**

454 **Second: D. O'Donnell**

455 **Discussion: None**

456 **Vote: 7 YES - 0 NO - 0 ABSTAIN**

457 **Motion passes.**
458

459 Respectfully Submitted,
460 Kerrin Randall, Board Assistant