



ZONING BOARD OF ADJUSTMENT
ZONING TASK FORCE AGENDA
JULY 25, 10 AM
MINUTES APPROVED 8.8.13

Present: S. Perley, **Chair/Zoning Representative;** W. Contardo, L. Guild, J. Tivnan, **Planning Representatives:** M. Foote, **Zoning Representative;** J. Driscoll, S. Weeks, J. Moriarity, **Public At Large;** S. Saunders, **Planning Director;** K. Snow, **Zoning Technician**

Absent: S. Bogert, **Zoning Representative**

Call to Order: S. Perley called the meeting to order at 10 am. She said we would go over the minutes first.

Minutes: June 27, 2013: W. Contardo moved to approve the minutes. L. Guild seconded and all voted in favor.

July 11: W. Contardo added a comment to the end of the first full paragraph about Laconia having its own identity. J. Moriarity moved to approve the minutes with the suggested change. J. Tivnan seconded and all voted in favor.

Chicken Ordinance Discussion:

S. Perley said at the last meeting W. Contardo had wanted input from other cities. She contacted them all. Below are her findings:

Berlin:

- Planner on vacation until July 29th. Currently do not allow chickens in residential districts but they are looking into it.

Claremont:

- Very old ordinance – has not been updated in ages. No mention of chickens in the ordinance.
- Currently allow them and refer them to NH State Law on Best Management Practices.
- Only problem they have had is with a rooster.
- More and more people are raising chickens

- Not getting any complaints – issues dealing with smell or manure are referred to the State Ag Dept. Then a regional Ag rep visits the site and works with the homeowner on how to manage and deal with their neighbors.
- Seems to be working – people have been responsible pet owners.

Concord:

- They have a “complaint-driven ordinance”
- Have been allowing chickens in residential districts for one and a half years.
- They only respond to complaints.
- In the past year and a half, they have only had two complaints – both from the same person.
- Overall they are happy with the way it is going.

Dover:

- Chickens are allowed in all residential districts.
- They allow up to 6 chickens, no roosters.
- Criteria: 3 SF of coop per chicken and 20 SF of fenced enclosure per chicken.
- 20 foot setback from any property line.
- Working well – no complaints.

Franklin:

- Currently allowed in the Ag district only – need 200 feet from any property line.
- Can apply for a variance or an agricultural waiver. Applicants are told to apply for both for one fee.
- Granting the variance depends on feedback from neighbors, but they do grant them.

Keene:

- Chickens are allowed in residential districts.
- They have a “Live Free Or Die” philosophy and have always allowed them in non-commercial districts.
- In 13 years they have had one complaint and that was about a rooster.
- They deal with issues when they come up.
- Average is 3-5 chickens.
- Three out of four employees in the Planning Dept raise chickens.

Laconia:

Lebanon:

- New law passed in March of this year to allow chickens.
- They have had 6 applications since March.
- There have been no complaints.
- No permit required to have chickens, but they must get a zoning permit to have the coop which they consider an accessory structure.
- Not allowed in multi-family complexes.
- The Zoning Permit helps to ensure that the setbacks are met and that effects on neighboring properties are mitigated.

Manchester:

- Allow chickens in residential districts, but you need one acre of land.
- It is not working for the City as no one has one acre in the residential districts.
- They received a ton of variance requests last year for chickens but did not grant them.
- City is re-thinking their position on this issue.

Nashua:

- Chickens are allowed in the Ag based residential and commercial zones.
- They get lots of calls.
- People who have chickens get referred to Code Enforcement.
- Overall it has not been a big issue in Nashua.

Portsmouth:

- Allowed by Special Exception (ZBA) in rural districts only unless it is a farm by definition. Not allowed in urban districts.
- Has not really been an issue since they are only allowed on larger lots.
- They don't get many calls.
- If people are doing it in the other districts they are doing it well, because they have had no complaints.
- They have considered changing their ordinance, but it is not a high priority. Too many other issues to deal with.

Rochester:

- Allowed in the Ag zone only.
- It has not been an issue.

Somersworth:

- Allowed in the Ag zone only.
- Use variance procedure to allow them in other districts, so relief is available. They have received only three variance requests and all were granted.
- They are the 3rd densest City in the state – only 9 square miles.

W. Contardo asked about cities that had rejected chickens completely and S. Perley said there were none. They had ordinances similar to ours where they are permitted in just the Agricultural districts but no one does not permit them somewhere.

W. Contardo said Boston doesn't want them and why aren't they allowed? What is the reasoning behind not permitting them? S. Perley said she didn't go outside of New Hampshire. She got constructive input from everyone she asked and was told basically there were no problems.

M. Foote said she mentioned that Nashua gets lots of calls and asked why? S. Perley said it is to have chickens, not to complain. All of the cities she questioned said chickens have not been an issue; people have been responsible.

J. Tivnan said his wife works for planning/zoning in Meredith, and this has not been an issue. The ZBA makes the determination.

M. Foote clarified that a variance would go with the property and S. Perley said yes, it travels with the land. M. Foote said he feels this is piece-mealing the community.

W. Contardo said half of the communities do permit but in Agricultural districts. M. Foote asked how far down does the density negate the ability to have chickens and S. Perley said they are permitted now in the RR1, RR2, CR and AI zones. M. Foote went over the permitted zones and asked at what level are we looking to go to? S. Perley said it is up to us to make that recommendation.

She said we have several options. One option is to take no action, another is to institute a policy for a Special Exception in certain districts or to permit it in all of the zones by right. S. Perley clarified with S. Saunders and S. Saunders said that is correct, we can add to one or more zones, or all if wanted.

M. Foote again asked if this goes with the land and was told yes, but the ZBA will have made an ordinance. S. Perley asked about the Special Exception and S. Saunders said it goes with the proposal so could be covered with that particular application. A variance runs with the land. A CUP goes with the specific proposal. If the property sells and the next people want the same thing, it would be allowed. But if the new owner wants to make a change, like in the number of chickens, they would be required to be approved again.

W. Contardo said what if the neighbors complain? S. Saunders said we don't want to put an undue burden on city resources or on a neighborhood. If we grant a Special Exception because we believe this will work in the beginning, and the neighbors as well, and in 5 years they come in and say this is not working, can do a compliance hearing. That could be part of the agreement. At that time we could talk about it again, and could pull the approval. W. Contardo said he understands but feels that down the road this becomes murky, and subjective, and if it was permitted by the city, you lose the intent of what we said, or the intent.

W. Contardo said he feels we are not doing the neighborhood any justice in permitting the use. He feels we would have no recourse. He likened this to smoking. Whose air is it? A person has the right to smoke but he doesn't want to breathe your smoke. S. Saunders said in following up with that analogy, as we learned the affect as we went along and we changed regulations. W. Contardo said yes, but it took 50 years to get to that point. Do we want to put people through that?

S. Saunders said things can be rescinded if they are not working. W. Contardo said a lot of the communities that have given input only permit the use in Agricultural districts now so they have no problems.

S. Perley said the cities that do allow them haven't had issues. W. Contardo said of all of the communities surveyed only half have ordinances that work.

J. Tivnan asked if we are putting a burden on the zoning department. He said someone has to go out to investigate complaints. S. Saunders said any changes to the ordinance are enforced by zoning. That is all of the changes this committee will be making, so think about the rest of the

proposed changes to the ordinance, too. She said that K. Snow now looks at boats in front yards, signs, etc.

W. Contardo said boats don't run down the street alone; chickens do. If a person swerves to miss a chicken, this could cause an accident. S. Saunders said many things have an impact on neighbors. For example, you can take a work vehicle home. People complain about that now as they feel they make too much noise.

J. Moriarity said he doesn't want to be on the dissenting side of the debate. He said his thoughts have been percolating for a while. When we first sat down, he asked the question about where to start. We had a wide open starting point, which we needed to whittle down, see where problems could occur, and mitigate them. He said we are going to come up against those scenarios in the future, whether it is with signage or other issues. He said if we start closing the door on chickens, when we get to the other issues, we will be chastised for not being consistent. The purpose of this committee is to deal with things that are already happening, not to encourage more. He knows at least 2 people in the Main Street group that are raising chickens now and people have no idea, because they are so low impact. He knows of a case where someone raised them for 5 years in their basement and their neighbors did not know. They were only found out when another issue arose.

S. Perley asked for thoughts from the other committee members.

S. Weeks said he thinks we could be opening a big can of worms, which could lead to problems in the future. Enforcement is going to be an on-going issue. People won't take care of what they are undertaking to do. He said he is not saying that this isn't a good thing to do. He is thinking of them maintaining the property.

L. Guild said he likes the ordinance as proposed but that we should add some type of permit to get them into the City so we know where they are located and have a fine if they don't follow the criteria. That way we could deny the permit, or rescind it if they violate it. We need to know where they are.

J. Driscoll asked about the Special Exception. Back to what S. Saunders had said: You have Family A, who gets a permit. Now they sell to Family B who doesn't do chickens initially but later on does. Do they have to come back to be permitted? S. Saunders said yes, there is a 12 month clause. They would have to renew the permit.

J. Driscoll said at the first meeting this was not on his radar at all so he had no preliminary opinion. From his perspective, he thinks we need permitting/registering. He said one person at the public meeting offered to be a test case. He doesn't think the ordinance where everyone can do this, makes sense. He thinks this is necessary because of enforcement, a lot of which will be done by neighbors. They should be offered the right to say something in the first place. You may have a good relationship now. Abutters should be able to weigh in, and give their opinion. He said he is not in favor of blanket approval. He said we need to look at different zones and that the research.

J. Tivnan said he has sat on both sides of the fence – both zoning and planning - and thinks we have qualified boards. It should be up to them to follow the rules or make it easy for the public to

interpret. He said do not set a precedent without back up so thinks J. Driscoll is correct: the asking should be there.

W. Contardo said he will go back to J. Moriarity's comment on closing the door on chickens. He said it is not closed as it is permitted now in Agricultural districts so it has been addressed in the past. He said he feels this is something we did consider it in the past so it has been done.

M. Foote said he has been watching this for a while. He just had a friend give him a rooster and 2 hens and the friend asked about the chicken ordinance and where the City is at on that. He said that, looking at where this is permitted now, consider the people in residential areas. He doesn't want to see chickens in basements or cabinets, but a variance that doesn't go with the property could work and opening a public hearing to neighbors, and letting them know, which would allow input from them, and give their approval, might work ok.. He said the RS or RG districts could work.

S. Perley said he used the word variance; did he mean Special Exception, and M. Foote said yes, so it doesn't go with the property. He said it has taken him a bit of time to come around to this. He feels that given the parameters we are setting, and doing the Special Exception to open the door to the use in the other districts, RS and RG, and also shoreline lots if their property fits the criteria, this could work.

S. Perley said she provided copies of the proposed ordinance, with a lot of restrictions and guidelines. M. Foote said if opened up to other districts he does have a concern with too many on a block.

J. Driscoll said what if House A has chickens, House B has none, and House C has, could we say no to a request by House B because others already have them. S. Saunders said she has not heard of that happening. The reason to have chickens is for the eggs so if A and C have chickens, and B doesn't, they would have no reason to have them because they are probably already getting free eggs. Every single house won't ask for this. There would be too many eggs, so she doesn't think that would occur.

W. Contardo asked about all those extra eggs. If they give them away, or sell them, we would foster an underground economy. S. Saunders asked why that is a bad thing and W. Contardo said eggs need to be candled. A bad egg could possibly affect 30/40 people in a heartbeat.

S. Saunders said she passes at least 10 huts selling eggs on Route 107 on her daily commute. W. Contardo asked if they are in Agricultural districts and S. Saunders said maybe; she has no way of knowing. S. Perley said all her research she doesn't show any issues with diseases.

J. Driscoll asked when thinking of a Special Exception do we factor in how many houses in a certain area can have them? What considerations do we need to think of? S. Perley said setbacks would be a consideration. S. Saunders said she doesn't think we factor in others in the area and read the criteria for the Special Exception. She said there is a consideration there to cover the neighborhood.

S. Perley asked J. Moriarity to clarify his stance on this. She feels S. Weeks is a negative. . L. Guild wants the Special Exception, as well as J. Driscoll. W. Contardo is a no. M. Foote agrees with the Special Exception.

J. Moriarity asked L. Guild his thoughts again, and L. Guild said he feels the Special Exception would work, as we need to know where the chickens are located.

S. Perley said to remember we are not adopting any laws here. Anything we decide will go to the City Council who will make the final decision.

S. Perley asked J. Moriarity again for his thoughts and he said he was going to make motion to adopt the ordinance as written so he is not opposed. He said he doesn't think he wants to live next door to chickens but read an article about 5 years ago that identifies local food sources. He said there is some merit with trying to allow for that growth to happen. If chickens become a problem, we will do something about it. He said he agrees with L. Guild that the Special Exception process is a good thing.

M. Foote said in talking about the language: do we reference the other districts we are thinking of adding. W. Contardo asked where he got the information on the districts and S. Saunders said that is in our zoning ordinance – the description of the districts. S. Perley passed out information on the zones.

M. Foote clarified that if we have written in where it is allowed, if opening up to RS, RG and shoreline (SFR), then it would be permitted by Special Exception only. He clarified it would not be allowed in the RA zone and was told that is correct.

J. Driscoll mentioned the ordinance as written now is set-back driven. S. Perley said first it is defined by district, then by use, then setbacks. K. Snow said there is a fee involved, too, so some people may not want to pay.

M. Foote said he is not seeing too many issues but asked about the DRD and was told that would also be defined by use and then setbacks.

S. Perley asked S. Saunders what districts she would say not to include and S. Saunders said that DRD is dense, as it permits 20 units per acre. She said the orange area on the map, RA, is also high density so that would not be appropriate.

S. Perley clarified we would propose to allow this in the RS, SFR, and RG zones, as well as the currently permitted zones. She doesn't think C should be permitted, and is not sure why AI is there. She clarified not in the DRD and was told that is correct.

M. Foote asked if should remove AI from the permitted zones.

M. Foote said he feels we should remove the AI zone, and S. Saunders said she agrees. She said there must have been something there at one point, but feels we can remove it from the approved areas. There are only manufacturing businesses there now, no homes, so the use would only be a large industrial type.

S. Saunders explained it is only permitted now in light blue, and light and dark green areas on the map. W. Contardo asked about use of light blue and if this had always been permitted there. He was told yes. M. Foote asked how density is controlled in the CR and that it would not be permitted in smaller lots. S. Saunders said if they can't meet the setbacks in the ordinance they could not have them.

J. Driscoll said has heard from people who would rather see permits issued for the CR district. He feels that we should change CR to approval by Special Exception.

New Business: S. Perley said we got a lot done today and we have been here for an hour so let's continue this to the next meeting. She asked the committee members to look at the districts we have proposed as well as the language in the proposed zoning ordinance and do a final vote at the next meeting.

S. Perley said the City Council wants us to look at signs but first we have issues with FEMA, and that ordinance needs to be re-written. She passed out the draft section of the ordinance which includes the required changes dictated by FEMA.

S. Saunders said their letter came in with the required language, along with 5 or 6 other things we should have been doing and haven't been. If we don't follow these, they will withdraw people's rights to have flood insurance coverage in Laconia.

The directive deals with how construction is done in a flood plain. S. Perley said she tried to contact the person who sent the letter on our, need to move forward with this but that he is on vacation until August 12. She will get back to him as soon as she can.

S. Saunders gave a general overview. She said that any construction in a flood plain must be built to withstand flooding, either built up or with special flood gates, so there is no pressure on the walls to knock over a building.

W. Contardo asked where we see this - in the downtown area – and S. Saunders said we have narrow flood plains located along the river, Jewett Brook, Black Brook, and Durkee. These are not vast areas. They are tiny corridors that hug the water. She said she does have a list, which she can bring along the next time, with flood plain maps.

W. Contardo asked if there is something implemented that controls flow of water, and S. Saunders said construction. W. Contardo asked if our ordinance is currently acceptable and was told no, our language is not acceptable to them. They gave us language on how to fix. This is an easy adoption of their language.

J. Driscoll said if this is for new construction are others grandfathered? M. Foote said that is a good point, will the other homes already done be covered? S. Saunders said we were supposed to be tracking those in Code Enforcement but that was not done. Part of the things requested by FEMA are the building permits back to 2005. We have provided them with that information. We have gone through them and come back with 5 or 6 that were built with no care to construction and the City is currently working with those people.

S. Saunders said one of the people we are working with is one of the units at Christmas Island. That was built within the flood plain, and nothing was taken into consideration when this was built. We are helping with surveying and to bring the unit up to par.

S. Perley said the language proposed is from the letter sent a year and a half ago, and she will be checking with FEMA on any changes and hopes to have that before the next meeting.

S. Perley said we will move on to signs next. The new electronic message centers are an issue. She said we see a lot of those at ZBA. We met with a sign company who builds the signs, and got good input. There are issues with where they should be permitted. They already exist on Union Avenue now. Court Street is broken up with these types of signs.

W. Contardo asked about the little signs all over the place on the sides of the roads. S. Perley said those will be dealt with. W. Contardo asked about enforcement on that. He said he thinks the State takes care of theirs on a regular basis. L. Guild asked about political signs, and M. Foote said those should be removed immediately and that is not done. He asked where does liability come in? There is a sign on Rollercoaster Road about purchasing a mattress, which he has seen all over the place.

S. Perley said to familiarize yourself with the use charts to see what is permitted and in what zone.

She asked about a date for the next meeting and asked if Thursdays work ok? August 8 was suggested.

S. Saunders asked the committee members to come to the meeting on August 8 with notes on language for the proposed chicken ordinance.

Adjournment: M. Foote moved to adjourn, with the second made by S. Perley; all voted in favor and the meeting adjourned at 11:15 am.

Submitted:

Kristine Y. Snow
Zoning Technician