

**PLANNING BOARD MINUTES  
WEDNESDAY, JANUARY 15, 2020  
MUNICIPAL BUILDING COUNCIL CHAMBERS – 7:00 P.M**

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

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

**Acceptance of the Agenda**

Motion: Lisa Buck, Michael Costello  
Seconded: Jeremy Chubbuck  
Motion Passed Unanimously

**Approval of the Minutes of the December 18, 2019 Meeting**

Because there were only limited members of the board present, this action was initially postponed to February along with the approval of the October minutes, which did not take place at the December meeting. Christa Schwintzer’s arrival allowed the board to vote on the December minutes, postponing only the October minutes until the February meeting.

Phil Ruck, Chair of the Planning Board, called for a motion to approve the minutes.

Motion: Jeremy Chubbuck  
Seconded: John Beckett, Lisa Buck  
Motion Passed Unanimously

**Old Business**

- a) **Continuation of a public hearing for a major site plan review application by Regional School Unit No. 26 for proposed expansions to the Orono Middle School/High School and Asa C. Adams Elementary School located at 6 Goodridge Drive (Tax Map 27-0, Lot 12) in the Medium Density Residential district.**

Mr. Ruck re-introduced the RSU Project that was presented in the December 18th meeting, and asked Town Planner Kyle Drexler for an update.

Mr. Drexler informed the board that the meeting proposed at the December Planning Board meeting, between town staff, the Tree Board, and the RSU applicants had taken place. The applicants’ engineer brought some potential ideas and the town brought to the applicants’ attention that it would be possible to get an easement to help with pond placement. The Town Council passed an order Monday (1/13) night saying that they would be okay with Town Manager Sophie Wilson issuing an MOU or an easement to

use town land on either side of the RSU property for stormwater management so long as said easement did not impact any existing town assets or other active areas. With that information the applicant brought back a new proposal currently being reviewed by staff, and once they get the okay on the newly proposed location they are going to begin finalizing the plans with hopes of returning to the Planning Board in February to continue the review process.

Mr. Ruck asked about the status of the other questions that had been raised by the December meeting, and Mr. Drexler confirmed that these too would be addressed in the February meeting. Mr. Ruck then asked if the DEP review of the site plan had been completed, to which Mr. Drexler replied that it was still in process, as DEP had given RSU some comments, outside the Planning Board's concerns, about the detention pond. DEP is now requiring them to have more of a stormwater management plan and a greater scale to the detention pond to control for different levels of water.

In light of the ongoing updates to the project, Mr. Ruck left the public hearing open.

Christa Schwintzer having arrived, at this point Mr. Ruck returned to the question of the December meeting minutes and called for a motion to approve them. Ms. Schwintzer noted a desired revision for the third page. The motion passed unanimously (see above).

## **New Business**

- a) A contract zone amendment request by Sons of Carpentry LLC to amend an existing contract zone for 117-121 Mill St to allow for an additional residential dwelling unit on the second floor of the structure.**

Mr. Ruck introduced the new contract zone amendment proposal, then invited the applicant, Mr. Jason Fish, to step up to the podium and present his case to the Planning Board. Mr. Fish's business, Sons of Carpentry, LLC, purchased the building in 2017, met with the Code Enforcement Officer Bill Murphy at that time, and proceeded to renovate the first and third floors. They started on the second floor. They've been seeking tenants for the office spaces on the first and second floors for almost three years now, to the point of almost giving away a year of free rent to attract tenants, to no avail. They then approached Murphy again with the plan of further renovating the second floor to one side of it into a two bedroom apartment. They have found that residential spaces attract more tenants than office spaces, and having the apartment on the second floor would be better than having the whole floor vacant. They approached Mr. Drexler with a plan, and have now brought it to the board for their consideration.

Mr. Ruck then asked Mr. Drexler for a summary. Mr. Drexler stated that the property has been a contract zone since 1995. Its surrounding area is all medium density residential. In today's MDR a structure like the current building at 117 Mill St would not exist, but through the contract zone that lot was turned into a high density residential lot in '95 and was to be used for banks, offices, medical offices, and a single dwelling unit on the 3rd floor. In 2010, the owner at the time came before the board with a similar proposal to have an additional dwelling unit on the second floor, because they were also struggling to find tenants. At the time the reasoning for not permitting the renovations was that student housing was more of an issue in town. There was no rental registration, or some of the larger complexes that now exist to house students, so students were spread out through residential neighborhoods, causing potential nuisances. So the 2010 proposal was rejected. However, it did allow for a few additional small scale commercial uses to go in on the first two floors that did meet certain conditions of the ordinance. But the

nature of the building remained commercial on the first two floors and residential on the third floor.

The current applicant wishes to do something similar with a single dwelling unit on the second floor, which would create a two family residential structure there. Two family structures are allowed by permit in the HDR, and are also allowed in the MDR. Though in the MDR a two family structure requires a site plan, it is not out of the realm of possibility. As with any zoning change or contract zone request, we try to relate the potential change to the town's comprehensive plan to make sure it makes sense within the town's long term vision.

There are a couple of factors mentioned in the comprehensive plan that speak to this idea:

1. Housing in and near downtown.
2. Encouraging mixed uses of properties in and adjacent to downtown, which 117 Mill St is an example of with its commercial spaces on the first floor and residential on the other floors.
3. Improving the quality of housing in and around downtown.

This means providing more housing opportunities, whether owner occupied or rental, and providing that housing near our existing services (bus lines, downtown businesses, etc.). All of that is very much a goal of the comprehensive plan. As is allowing downtown Orono to grow in a compact, walkable manner, building on its village architecture and character. This is not a structural addition, it is contained within an existing structure that is currently not being used, so the proposed change would allow the applicant to use space that is currently not being utilized to serve a need that the town has identified in the comprehensive plan.

One of the main issues in 2010 was the idea of student housing, and finding a balance of rentals with existent residential neighborhoods. Mr. Drexler referenced the image included in his report, a small map of the Mill St location, and identified the colored blocks on the map as other rental properties that have been registered with the town as an example of the way in which student housing/rental units have already become integrated into the neighborhood. As to the issue of parking, the requirement for parking after the conversion of half of the second floor to a residential unit would actually be less than is required for the current commercial use, and there is a parking lot to the rear that would be able to accommodate any additional volume.

The Mill St location is a legally non-conforming lot, and so long as it is legally non-conforming and you're not making any structural additions to the building, you can expand the residential use within that building.

Mr Ruck called for questions from the board. Receiving none at that point, he opened the public hearing.

Ray Thomas of 104 Mill St was the first to approach the podium. He stated his opposition for the the conversion of the 2nd floor of Mr. Fish's building, citing numerous issues with tenants of 117 in previous years including drunken and unsafe behavior up on the building's roof (golf balls being hit from the roof, bottles being tossed from the roof, tents being pitched on the roof, bottles being aimed at the chimney of the shorter building next door, etc.). He did however, acknowledge that in the last year he had had no problems with the current 3rd floor tenants.

Mr. Fish responded that in the past he had been working with an unfamiliar property management company who were responsible for the leasing of the previous tenants. Though not without difficulty, they were finally able to remove the troublesome tenants, and management of the property has been taken over by a trusted manager who Mr. Fish has worked with before. Roof access to the building will be cut off as

it is actually a safety hazard, and a new fire escape system will be installed instead. There have also been lots of internal renovations, but he needs to be able to get income out of the building before being able to put further funds into the building. Thus the conversion of one half of the second floor.

Mr. Ruck asked Mr. Fish if he was aware of the recent ordinance changes with regards to problem properties. Part of the comprehensive plan is to lock down what has been an underlying problem and put in place procedures for dealing with problem properties.

Mr. Thomas stated he had called the police multiple times about the property, to the extent that they recognized his phone number and knew without being told which property he was calling about.

Mr. Fish acknowledged that he was aware of one police report that was sent to him regarding tenant misconduct. He reiterated that the problem tenants had been removed.

Mr. Ruck stated that the Town had spent almost 2.5 years developing the comprehensive plan, trying to deal with all these specific issues. They tried to put teeth in that to the best of their ability. It's a serious issue, so if there are neighbors with complaints they're able to report those issues and see a response, that's how this is supposed to work. The town has tried to enact ordinances and put procedures in place to support the mingling of residential and downtown areas that Mr. Drexler mentioned, and takes supporting those areas seriously, [speaking to Mr. Thomas] so if there is an issue, keep calling.

Mr. Fish confirmed that he also wanted to know about issues with the property as they arose, so they could be dealt with. He takes pride in his properties and does not want them to be labeled nuisances.

Mr. Ruck asked for additional comments or questions from the public. Roberta Bradson of 64 Mill St, owner of The Store Ampersand, approached the podium. She asked about the number of bedrooms that the new second floor unit would have.

Mr. Fish joined her at the podium so that he could answer her questions on the record as they were asked. He replied that the new unit would have two bedrooms, and would take up one side of the building only. They may consider turning the other space into an Air BnB.

Mrs. Bradson then asked if he had any other properties in Orono, to which Mr. Fish replied in the negative.

Jon Bradson stepped up to speak when Mrs. Bradson had taken her seat. He began by asking if the proposed contact zone change had been approved by the fire department.

Mr. Drexler responded that approval by the fire department was not a consideration in the approval of a contract zone change, but that it had been reviewed as part of the permitting process through the Office of Code Enforcement. Approval of the contract zone change allows for the possibility of the proposal to exist, the issuing of a permit allows it to exist.

Mr. Bradson then asked about the distribution of units in the building, and the number of parking spaces required for the building.

Mr. Drexler clarified that, if the change were approved, there would be the old single dwelling unit on the third floor, and the new single dwelling unit on the second. Residential units require three parking spaces, and office spaces require one parking space for every few hundred square feet.

Mr. Bradson asked if Mr. Drexler knew how many parking spaces the building's lot had.

Mr. Drexler estimated that the number of spaces was somewhere in the twelve range, approximately. Which is about what would be required.

Mr. Bradson asked Mr. Drexler if the apartment on the third floor had four bedrooms. Mr Drexler confirmed that was correct.

Mr. Bradson then asked Mr. Drexler if he was familiar with the laws pertaining to three or more unrelated people sharing an apartment.

Mr. Drexler clarified that the lot was zoned as a high density lot, in which case multi-family buildings are allowed, and where multi-family buildings are allowed you can have up to five unrelated people in one dwelling. In the surrounding MDR you can only have three unrelated persons, but in the Village Commercial, C2, or HDR districts you are allowed to have five.

Mr. Bradson conceded that he had been unaware of that fact, and stepped back from the podium.

Mr. Ruck asked for other questions. He acknowledged that he was curious about the parking situation as well, and asked Mr. Drexler to confirm that there should not be an issue because residents could park in the lot behind the building as well as on the street.

Mr. Drexler explained that the the off street lot meets all the parking requirements for the building. If you were to map out parking lines on the lot then the number of spaces would meet the parking requirement. But approving the contract zone change is not the same as looking at the issue from a site plan perspective. If the parking wasn't met the applicant would not be able to get a permit through the Code Enforcement Office, but his having met that requirement does not factor into the board's decision to approve or deny the contract zone change.

Mr. Ruck stated that he wanted to be sure the board had enough information to make a recommendation. Based on Mr. Drexler's information, Mr. Ruck concluded that the parking was sufficient and that the board did not need to include that in their consideration.

Director of Economic Development Dave Milan took the podium to support the applicant and give a little economic background of and expectations of the future for the area around the property. In 2009 the latest time the contract zone was reviewed, there was concern because as many of you know that time was kind of the height of the "animal house" mentality going on at the time. We have created a number of ordinances to deal with disorderly properties. In 2019 the ordinance for disorderly properties was adopted, so the Police Department now has the "teeth" to deal with those types of properties. Given the history of the property, concerns about additional occupants are understandable, but his office feels that the applicant has done everything that has been asked of him to improve the property, improve safety at the property, and remove past issues. The previous owner came to the board ten years ago because he was having difficulties meeting the requirements of the original contract zone, and renting out the commercial spaces. Second floor commercial uses are much more difficult to rent out than first floor commercial spaces. Mr. Milan has been working with the applicant, the current property owner, for the last year trying to rent that second floor space. The applicant offered some pretty lucrative incentives to try to entice tenants, but without success. If he were coming to the board asking to put three new residential units into this building that would be a different conversation, but Mr. Milan's office believes that having two units in that building is no different than every other building in the area. A number of rental properties exist in that neighborhood already without visible negative consequences. Mr. Milan acknowledges that concerns

of the neighbors again, but reminds them and the board that, should Mr. Fish repeat the negligence of previous landlords, there are now ordinances in place to deal with him.

Mr. Ruck thanked Mr. Milan for reinforcing the goal of the town's comprehensive plan: make this work to provide residential opportunities, but have the "teeth" to handle properties that get out of hand. Mr. Ruck then asked if there were additional questions for the public hearing. .

Mr. Drexler presented an email sent in by Jean Lavigne of 107 Mill Street, who was not able to attend the meeting for health reasons but wanted to offer her opinions on the applicant's proposal. The contents of that email were read to the board by Mr. Ruck, and are included here [email is included as received, unedited for errors]:

Dear Planning Committee Members,

My spouse and I have lived at 107 Mill St, the adjacent property to the proposed project since 1995. I spoke in support of the contract zone for 117-121 Mill St at the first public hearing in 1996 or 1997. I along with my neighbors were supportive of the proposal for third floor being an apartment and the first two floors for certain types of businesses. Even at that first hearing it was clear that none of the neighbors were supportive of the second floor being an apartment.

In 2011 the owner came back to the planning board and requested that the contract zone be amended to allow the second floor to become an apartment. The neighbors again did not support the approval of a second floor apartment. The applicant then deleted the second apartment as an allowable use before it went to the town council.

All of the abutting properties are single dwelling residences. It is generally a quiet area. The reason I am not in favor of the second floor being an apartment is that the businesses who have rented have always been good neighbors.

Our quality of life decreases when the third floor apartment is full. The parking lot generates noise late at night and when the University is in session often the it is full. The combination of two-thirds of the building for business and one-third for an apartment is the right mix for the optimum use of the available resources and to be most similar in use to the property abutters.

It is unfortunate that as abutters to this contract zone we are forced to keep responding to the second floor apartment issue. I, like the other abutters, have lived here long before the most recent applicant, who had to have known the constraints the property had and purchased it for a price that must have taken that factor into consideration.

I thank you for your time and opportunity to provide this input.

Sincerely,

Jean Lavigne

Mr. Ruck pointed out that Mrs. Lavigne's concerns were similar to those presented by commenters earlier in the evening about past issues at the property. We have heard from the Economic Development Office that recent developments have taken place that will ensure things do not get out of hand, or that if they do we have the regulatory processes to fall back on. He then issued a last call for the public hearing.

Mr. Bradson returned to the podium to argue the idea that any HDR building that he was aware of in that

area could handle five automobiles per apartment. He expressed confusion as to how the town could pass such a policy.

Mr. Drexler pointed out again that the area around 117 Mill St was all MDR, medium density residential. Contract zones only apply to one property, and in this case 117 Mill St, by virtue of its contract zone, is designated HDR.

Mr. Bradson interrupted to ask if the lot behind the building could handle five cars per apartment.

Mr. Drexler referred to the minimum parking requirements which state that the minimum requirement for a residential use is a smaller impact than a commercial use. So even if it didn't meet it, it is a less non-conforming use than what currently exists. The parking there is not an issue now because the second floor space is vacant. If there was a commercial office in there a number of employees, the parking lot could be overflowing. Having the residential unit, there are only three required parking spots per unit. So the fact that it is less of a non-conforming use means that it would be allowed.

Mr. Bradson reiterated that he could not see how that town had passed the rule regarding five unrelated people in an HDR unit.

Jud McIntosh pointed out that it has always been that way. The three person rule was always just for MDR, it was targeted at those neighborhoods and those people buying those homes and then renting them to five students

Mr. Bradson replied that, either way, he cannot see how those lots in that area can handle that amount of parking.

Mr. Ruck thanked Mr. Bradson for his opinion, but what the board can make a decision on is based on the rules as they stand.

Mr. Milan asked to respond to Mr. Bradson's point. He explained that a contract zone is a negotiated agreement between a property owner and the town as to how a specific property can be used. He gave the example that if the Town Council said we're going to allow this to happen but the house has to be purple then that's what the agreement is. If it is the Planning Board's recommendation to the Town Council that the Council needs to consider what the agreed upon parking is, that's a legitimate comment. He stated that he would certainly be taking that back into the Council. So the board, and subsequently the Council, can say that adequate parking needs to be provided. Then, if we start having problems with a spillover of parking, it becomes a violation of the agreement. So concerns about parking are valid, and the Council can take those into consideration when they are agreeing upon the contract change. He thanked those who came to comment for their input, and suggested to the Planning Board that they pass on to the Council anything that they consider worth looking at before approval of the change.

Mr. Ruck stated that his one concern about the proposal was the parking. He asked Mr. Fish again whether there were two or three bedrooms in the unit, and acknowledge what Mr. Drexler had said about the new usage being less non-conforming than the existant usage.

Mr. Fish offered additional comments on the parking currently available at the building, addressing in particular the problem of overflow. He stated that there are currently people, tenants from other buildings, "helping themselves" to that lot. This came to light more recently when Mr. Fish's plowman would call after a storm and inform him that some of the cars in the lot did not belong - their license plates were not on a list of approved tenant vehicles provided by Mr. Fish. So as far as ample parking is concerned, Mr.

Fish does not believe it will be an issue. The spots in the lot have never been painted out but at his estimate there are twelve or fourteen spots available for use.

Mr. Ruck gave the last call for public comment, then closed the public hearing. He acknowledged that he had heard comments provided, and believed that passing on the concern about the parking situation to the Town Council, and asking for the provision of some assurance as to the validity of the parking at 117 Mill St, was a reasonable idea. He reminded the board that they would not be approving the project, but rather passing a recommendation on to the Council, and asked for the thoughts of the board members.

Jeremy Chubbuck asked if, given that the current layout is adequate to provide for a new two bedroom residential unit, all the concerns being raised weren't automatically addressed?

Mr. Drexler stated that a contract zone can put more limitations on a lot than the base zoning district.

Mr. Chubbuck pointed out that, in this case, that did not seem to be necessary.

Mr. Drexler confirmed that point, adding that the current allowable use is actually more impactful than what is being proposed. So what has been agreed to for the past twenty-five years had the opportunity to cause more of a negative impact than what is being proposed now, from a traffic and parking point of view.

Mr. McIntosh added to this that the perception that the current use is less impactful stems from the fact that second floor office space has been empty for so long. So to the neighbors it will appear as if there is an impact from the new use simply because there will be a change in the amount of parking in the lot. If someone was in the second floor office space, and had had ten employees, it would have a greater impact on the traffic in that lot than a two bedroom apartment. Mr. McIntosh did add that he thought the board should recommend the Council ask for something in writing regarding the definite removal of access to the roof.

Mr. Ruck pointed out that roof access was related to the third floor usage, while the board was meant to be deliberating on the amendment to the contract zone that would change the use of the second floor.

Mr. McIntosh stated that, nevertheless, he thought they should ask for something stating that there would be no more roof access for anyone.

Mr. Ruck agreed that they could pass along that recommendation to the Council, then asked for additional thoughts on the parking issue, acknowledging the validity of Mr. Chubbuck's point as well.

Christa Scwintzer added that, given the number of parking spots in the parking lot currently being occupied by non-residents, the availability of parking didn't seem like something the board needed to worry about.

Mr. Ruck concluded that the board can ensure the roof access (though after hearing from the Applicant and Mr. Milan it seems correction of this issue is already underway) and parking concerns are conveyed to the Town Council along with their recommendation. He then consulted with Mr. Drexler as to the proper procedure for passing on the board's recommendation.

Ms. Scwintzer stated that it seemed reasonable that the contract zone be amended to deny roof access to tenants, and Mr. Fish pointed out that the new code doesn't permit roof access anyway.

Mr. Ruck call for a motion to recommend the Applicant's proposal and the board's proposed changes to the Town Council.

Motion: Jeremy Chubbuck

Seconded: Lisa Buck

Motion Passed Unanimously

### **Other New Business**

There was no other new business to be discussed.

### **Discussion**

Mr Ruck proposed that the board consider meeting at 6:30 pm instead of 7:00 pm at future meetings. He pointed out there does not seem to be a set reason to meet at 7:00 if the board members are all willing to meet earlier.

The proposed time change was met with approval from Mr. McIntosh, Mr. Chubbuck, Mr. Buck, and Mr. Costello. Ms. Schwintzer expressed some concerns about the time crunch of getting dinner in before the meeting, but conceded that if the rest of the board wished to meet at 6:30 pm she would be there.

Mr. Drexler stated that he'd have to check the procedure for changing the time of the meetings.

Mr. Ruck asked that Mr. Drexler let them know and the board could discuss it next meeting.

Mr. McIntosh raised a concern about the fact that the February meeting would coincide with the school system's February vacation. Mr. Ruck said that he might also have a conflict for the 19th as state championships are that week and did not know what that schedule would look like yet.

Mr. Drexler suggested that the meeting could be moved. He believed that the RSU Applicants were alright with meeting during February break, but the meeting could be rescheduled. He suggested moving it to a later date, rather than an earlier one.

Mr. Ruck agreed, and asked if there was any opposition from the board with regards to bumping the meeting back a week to the 26th of February.

Mr. Drexler cautioned that he'd have to check and make sure there was nothing going on the following week in the Council Chamber.

Jessica Chadbourne asked Mr. Milan to confirm if the meeting of Orono Economic Development Corporation on the 26th was going to take place in the Council Chamber.

Mr. Milan confirmed that the meeting would usually be in the Council Chamber, but he's the one who schedules that meeting so it can be moved. He proposed flipping the dates, so that the OEDC would meet on the 19th and the Planning Board would meet on the 26th.

Mr. Ruck asked if everyone was alright with the change to February's meeting date, and there was a general consensus that the meeting be moved.

### **Adjournment**

Motion: Lisa Buk

Seconded: John Beckett

Motion Passed Unanimously

The meeting was adjourned on January 15th, 2020 at 7:58 pm.