

**TOWN OF TUFTONBORO
PLANNING BOARD
January 21, 2021
APPROVED MINUTES**

Members Present: Matt Young, Chairman, Gary Qua, Vice-Chairman, Bill Marcussen, Selectmen's Representative, Tony Triolo, Carol Bush, Members, George Maidhof, Alternate.

Members Absent: Kate Nesbit, Laureen Hadley, Members.

Staff Present: Lee Ann Hendrickson, Administrative Secretary.

Chairman Young opened the meeting at 7:00 PM at the Tuftonboro Town House.

Chairman Young appointed George Maidhof, Alternate, to sit in for Laureen Hadley, Member.

I. Public Comment

Marilyn Stacy, 23 Fir Tree Lane, requested the Board update the Town's zoning to conform with zoning changes of current law and current Well Water Board rules. She stated such should be done by the Planning Board in a warrant article for the 2021 Town Warrant. She stated she filed a petition warrant article on 1/15/21; noting the Town Clerk verified 26 registered voters had signed the petition. She stated she wants the Town's zoning updated in case the warrant article passes. She stated at the 1/7/21 Planning Board meeting there was discussion regarding a waiver and noted such is not needed because the setback is 50'. She stated she spoke to Jeb Bradley regarding the matter. She reviewed the 2019 NH Revised Statutes and the Well Water Board rules, see attached.

Bill Marcussen stated the BOS moved the date of the Town Meeting due to the COVID-19 pandemic however, the dates required by the RSA relative to filing dates still have to be complied with. He stated the Planning Board has already held the public hearing for zoning changes for the 2021 Warrant.

Marilyn Stacy stated the law and the Well Water Board says that a 50' setback is ok however, it has to be done through a waiver and certified mailing process. She reviewed the Town of Dunbarton's Zoning Ordinance, see attached.

Matt Young stated that to change the minimum lot size to ¼ acre would be contrary to the Master Plan.

Marilyn Stacy stated she wants the matter discussed in more detail at Town Meeting. She discussed septic systems, changes in the law, setbacks and issues with pollution.

Tony Triolo asked Ms. Stacy what she would like the Planning Board to do.

Matt Young stated she is requesting the Board to change the well radius setback from 75' to 50' using the Pythagorean Theorem.

Tony Triolo asked if such is within the Board's jurisdiction.

Matt Young replied yes. He stated the Board does not have the ability to change zoning to be less strict than the State's regulations. He noted that if the Board reduces the well radius from 75' to 50' and the change wasn't done properly that the Town would be liable. He stated such a change would require communication with the State, engineers, Well Water Board and the Board's counsel; noting it would be a significant investment for the Town to undergo the change.

Marilyn Stacy and the Board discussed testing of private wells.

II. **Consideration of Minutes**
December 3, 2020

It was moved by Tony Triolo and seconded by Gary Qua to approve the December 3, 2020 Tuftonboro Planning Board minutes as submitted. All members voted in favor. The motion passed.

January 7, 2021

Corrections: Page 1, Public Comment; change "September 1st – October 1st" to April 15th – October 30th"

It was moved by Tony Triolo and seconded by Carol Bush to approve the January 7, 2021 Tuftonboro Planning Board minutes as amended. All members voted in favor. The motion passed.

III. **Action Item**

Recommendation of Appointments to the Master Plan Steering Committee

Gary Qua stated the following individuals have volunteered to serve on the Master Plan Steering Committee; Carol Bush, Sue Wingate, Barbara Maidhof, Laureen Hadley (alternate member) and himself.

It was moved by Tony Triolo and seconded by Gary Qua to recommend to the BOS the appointments of Carol Bush, Sue Wingate, Barbara Maidhof, Gary Qua as full members and Laureen Hadley as an alternate member to the Master Plan Steering Committee. All members voted in favor. The motion passed.

IV. **Discussion Items**

a. **Steve Hunter Site Plan Review Compliance (Self Storage Facility)**

The Board tabled such until receipt of an opinion from Planning Board counsel regarding the matter.

b. **Mountain Shadows 2006 Subdivision / Fenton Varney Release of Financial Security**

Matt Young stated the site was reviewed by Tyler Phillips rather than White Mountain Survey & Engineering due to time constraints. He stated Mr. Phillips performed the final inspection and noted the gravel is in excess of the amount of gravel required. He stated there was a question as to whether the approved plan required asphalt however, such could not be determined. Based on the engineer's final inspection he recommended the release of the balance of the financial security.

It was recommended by Tony Triolo and seconded by Gary Qua to recommend the release of the balance of the financial security held in escrow associated with the Mountain Shadows 2006 Subdivision / Fenton Varney. All members voted in favor. The motion passed.

c. **Funding for Master Plan Update**

Staff confirmed with Bill Marcussen that the BOS encumbered the funds necessary for the Master Plan update.

V. **Other Business**

Durgin Road – Illegal Tree Cutting

Matt Young stated that all roads in the Town of Tuftonboro are considered scenic roads and fall under the State's statute. He stated property owners are required to contact the Town (Planning Board) prior to cutting trees within the right-of-way.

Tony Triolo asked if the trees that were cut were in the right-of-way.

Matt Young stated some of the trees were within the right-of-way.

Carol Bush asked how the issue is being resolved.

VI. **Public Comment**

None.

It was moved by Tony Triolo and seconded by Gary Qua to adjourn the January 21, 2021 Tuftonboro Planning Board meeting. All members voted in favor. The motion passed.

There being no further business before the Board, the meeting adjourned at 8:05 PM.

Respectfully Submitted,

Lee Ann Hendrickson

Lee Ann Hendrickson

Memo

To: Lee Ann Hendrickson
From: Marilyn Stacy
Date: 21 Jan 2021
Re: Statement to quote on my
commentary at this meeting

"The reason I attended the Dec. 22nd 2020, Town of Tiptonboro planning board meeting, was to request that the planning board update the Town zoning to conform with zoning changes of: current law and current well water board rules."

This should be done by the planning board in a warrant article for the Town March 2021 Meeting."

C. Nonconforming Lots

Structures shall be permitted on a lot having frontage or an area which is less than that required by the Table of Dimensional Regulations if said structure is permitted by right within that district and if all of the following provisions (a. thru e.) are met:

a. The lot was a parcel of record that is: a.) shown on an approved plan, or: b.) described within an historical deed; either of which shall have been duly recorded at the Merrimack County Registry of Deeds prior to the effective date (March 10, 1970) or applicable amendment of this Ordinance.

b. The lot is capable of supporting a well and septic system designed and installed in compliance with all applicable Town of Dunbarton and New Hampshire Department of Environmental Services regulations.

The proposed septic system shall be designed, insofar as practical, in accordance with the Town of Dunbarton 50 ft. set-back requirement for conforming lots. Set-back distances as allowed per NHDES regulations, however, may be utilized in the event of lot-size dimensional constraints and/or pre-existing physical conditions of a permanent nature that restrict placement of a system designed in accordance with the Town of Dunbarton requirements. The proposed septic system shall not create a threat to individual or public health, safety and welfare, such as degrading ground or surface water, or causing damage to surrounding properties.

In the event any proposed septic system, or portion thereof, is to be located closer than 50 ft. to an abutting property line, notice shall be given to the owner(s) of such abutting land; clearly explaining such proposed design and construction. Written notice shall be given by certified mail, return receipt, enclosing a brief explanation of the planned construction, a readable copy of the proposed plan, and a written statement that "any concerns and comments as to the increased likelihood of pollution potential to abutting properties, must be directed in writing, within 30 days of the mailing hereof, to the Dunbarton Building and Planning Department." Such duly submitted comments shall be taken into account in any septic design plan review to be conducted by the Town of Dunbarton and/or the N.H. Department of Environmental Services, Sub-surface Systems Division. No final plan review shall be approved by the Town, or forwarded to NHDES, until such time as the comment period, where required, has lapsed.

c. Any increase in heated living space in a building or structure on a nonconforming lot that the Building Official determines is reasonably capable of increasing the number of bedrooms on a nonconforming lot, shall require the septic system be reviewed, and if necessary, a new or modified system be designed and installed, and approved by the New Hampshire Department of Environmental Services and the Town of Dunbarton.

Wells shall meet the set-back standards and criteria established under Art. 4. A-6-d: "Private residential water wells." If any part of the well radius extends over the lot lines of a non-conforming lot, the well shall be grouted to below bedrock-depth.

d. All buildings and structures, other than septic systems and wells (as described above), or those uses requiring special set-backs or requirements per regulations in the underlying zone, ~~wells or septic systems~~ shall comply with the following minimum setback requirements: ~~in the Table of Dimensional Regulations.~~

Total Lot area	Side & Rear yard Setback	Front yard Setback
Under 1 acre	20'	25'
Between 1 and 2 acres	30'	30'
Between 2 and 3 acres	40'	40'

Septic systems shall not create a threat to individual or public health, safety and welfare, such as the degradation of ground or surface water, or damage to surrounding properties.

dd: at **"ARTICLE 4." USE AND DIMENSIONAL REGULATIONS";**
Section "A. Use Regulations";
Sub-section "6. Supplemental Provisions...";
New section "d. Private Residential Water Wells-

d. Private Residential water wells-

Private on-site residential water wells, serving no more than an equivalent of 5-bedrooms, shall be located a minimum 75 ft. from property lines, public rights-of-way, septic system leach beds, and other observed or probable sources of contamination.

All wells shall be located in a manner to reduce the likelihood of contamination from sources of pollution at or near the ground surface.

In the event a minimum 75 ft. protective well radius cannot be maintained on an individual building lot (serving 5-bedrooms or less), due to lot size or pre-existing physical constraints of a permanent nature, the Building Official may permit the installation of a private on-site water well with less than the minimum required protective well radius, subject to the following conditions:

- a.) That a technical site assessment, to consider the need for protection from pollution at a particular building site, be jointly undertaken, by: a.) the Town of Dunbarton designated Building Official, and: b.) the N.H. licensed water well contractor responsible for constructing the well.
- b.) That special methods of construction be implemented, if deemed required per such technical assessment, to provide additional protection from pollution potential.
- c.) That a "hold-harmless" agreement, indemnification, and/or standard release form, as determined at the sole discretion of the Building Official be signed by the lot owner(s), acknowledging that said owner(s) has no cause of action against the State of N.H., the Town of Dunbarton, or any owner of abutting property, if the subject well becomes contaminated as a result of the decreased set-back distance.
- d.) That, where applicable, and required by the Building Official, a protective deed easement be recorded, encumbering such other land within the prescribed protective radius, declaring that such land is permanently dedicated to a use that precludes development.
- e.) That if any part of a well radius extends over the lot lines of any abutting non conforming lot, which in the opinion of the Building Official is capable of development, the well shall be grouted to below bedrock-depth.

In granting any waiver from the minimum 75 ft. protective well radius requirement, the Town of Dunbarton, in addition to the above requirements, shall implement and enforce all other provisions of RSA 485-A:30-b, Env. Ws 1008.05 through 1008.11 (Subsurface Systems; well radii), and We 602.5 (Water Well Board; well location), as may be applicable.

2019 New Hampshire Revised Statutes - Title L - Water Management and Protection - Chapter 485-A - Water Pollution and Waste Disposal - Section 485-A:30-b - Protective Well Radii.

<https://law.justia.com/codes/new-hampshire/2019/title-l/chapter-485-a/section-485-a-30-b/>

NOTE: "RECORDED EASEMENT" includes "Cross Easement" as per
NH - NEW WATER WELL BOARD RULES,

Universal Citation: NH Rev Stat § 485-A:30-b (2019) **EFFECTIVE MARCH 1, 2017**

485-A:30-b Protective Well Radii. -

I. All lots on which wastewater is or will be disposed on-site and all lots on which a private well serving a public water system exists or will be installed, including lots created prior to August 20, 1989, shall be subject to the following conditions:

(a) Rules adopted under this section concerning such lots shall include provisions allowing abutting lot owners to overlap their respective well radii for their mutual benefit and provisions allowing well radii to extend over property lines onto state and locally-mandated property line setbacks, recorded easements, or land which is permanently dedicated to a use which precludes development.

(b)(1) For any private well being installed or utilized to serve one or more new commercial buildings or a non-community public water system, the entire protective well radius shall be located on one or more of the following: on-lot, on a recorded easement, on land which is permanently dedicated to a use which precludes development, or on state or locally mandated property line setbacks.

(2) A private well may be installed without being located as required by subparagraph (1) only if it is needed to replace a well serving one or more existing commercial buildings or a public water system, there will be no increase in water use to a level that requires a larger protective well radius under rules adopted by the department, and the lot is not part of a larger parcel that is being subdivided. In such cases, the on-lot protective radius shall be maximized to the extent practicable and the owner of the property shall sign a standard release form prepared by the department, upon which the actual protective radius shall be noted together with a narrative description of the location of the well, to acknowledge the potential loss of the protection of any portion of the radius which extends over the property line. The owner shall record the release form in the registry of deeds and shall file a copy of the recorded release form with the department.

(3) If a private well installed under the provisions of subparagraph (2) is not regulated as a public water supply well under RSA 485, the department shall require such water quality monitoring, recordkeeping, and reporting as is needed to ensure the water is suitable for its intended uses.

(4) For the purposes of this section, the term "commercial building" means a building that houses a commercial use but shall not include a residence which is also used for commercial purposes unless the total water withdrawal exceeds 600 gallons per day. A new commercial building means a new structure intended for commercial use, an existing residential structure being converted to commercial use, or an increase in water use at an existing commercial building to a level that requires a larger protective well radius under rules adopted by the department.

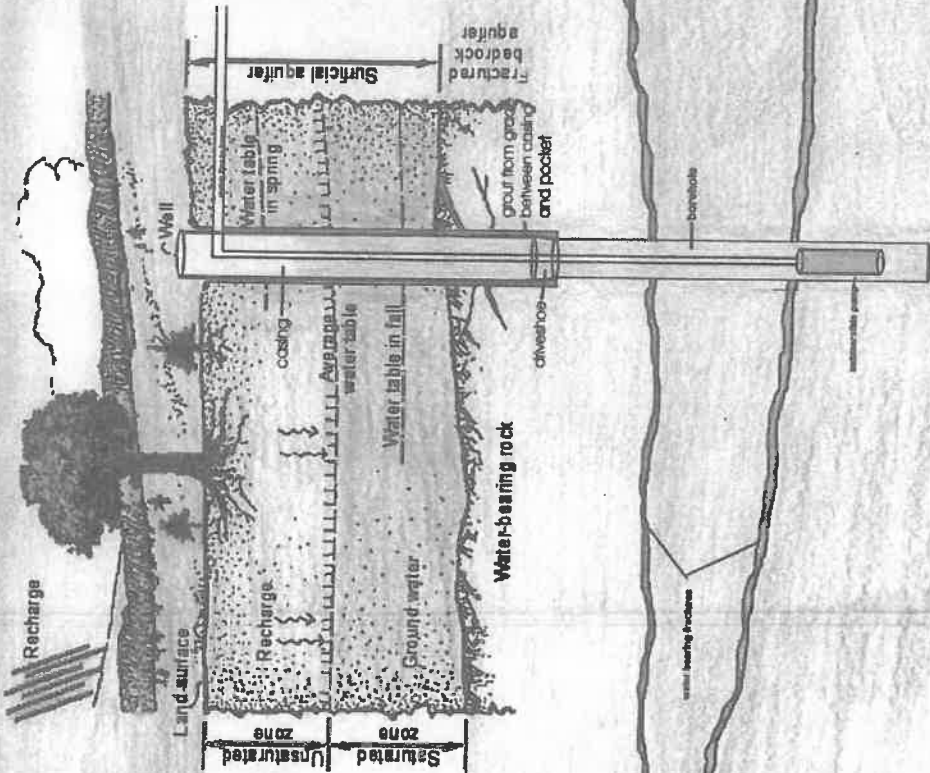
(c) For private wells serving buildings other than commercial buildings, if the protective well radius cannot be wholly maintained on an existing lot of record due to the size or other physical characteristics of the lot, then the on-lot protective radius shall be maximized to the extent practicable. Subject to the foregoing sentence, the

* protective well radius shall be maintained on one or more of the following: on-lot, on a recorded easement, on *
land which is permanently dedicated to a use which precludes development, or on state and locally mandated property line setbacks.

(d) Any person submitting plans and specifications for a sewage or waste disposal system for a property which is or will be served by an on-lot well, shall show the location or proposed location of the well, or a designated area within which the well will be located, on such plans and shall show the protective radius as specified in the department's rules.

(e) Whenever the department approves a septic plan with an on-lot well radius which is less than the optimum standard, the department shall notify the applicant of the consequences of such reduced radius and advise the applicant whether special precautions should be taken relative to well installation.

Effective March 1, 2017



Protective Well Radius

RSA 485-A:30-b

A protective well radius shall be contained:

1. Wholly on-lot
2. On a recorded easement, including cross-easements to facilitate overlapping well radii
3. Within land that is included in state and locally mandated property line setbacks to septic systems, generally 10 feet

Special methods of construction are not required for scenarios 1-3 above

4. On lands which are permanently precluded from development

Minimum casing length when setbacks are not met

Example: Well is 45' from EDA

$$b = 60'$$

A minimum of 60 feet of casing required at a distance of 45 ft from the EDA

