

Historic District Ordinance

Steve Bennett recused

Gary Sparks-The Planning Board held two seminars State Historic Resources and Steven Buckley of the Municipal association. These were to educate the Board and the Community as to what Historic districts are and what Historic Commissions do.

Presentations by the State and Municipal Association came in. They deal specially with the laws.

This is the ordinance that was tabled last year along with this is especially true dealing with material changed in the various tables dealing with more specific matters information that we learned from the educational programs we have had here. We feel that this ordinance will comply very nicely with current state regulations not only in terms of the letter of the law but with the intent of the law this will give the town flexibility when working with the Historic District and Historic District Commission. I feel that also very important This is driven home by the Municipal Association's Presentation I think compliance with this ordinance would protect the town from any lawsuits arising of disputes within the historic district itself. That is a real and present danger whenever you have a regulation what tells people what they can do with their property and that is what this ordinance does. It tells people what they can do with their property in a particular area of town so we wanted to be very careful. We have given the public a number of chances to have some input and this is what we feel will work.

Gary Sparks opened the hearing and called on Jon Daley

Jon Daley- The first one and maybe this a "don't ask don't tell" I think Robyn is correct in terms that the temporary sign has always been there. I looked up the definition of Temporary Signs and that means that for such events such as History Alive are not allowed.

Robyn Payson-I believe as it is now they are not allowed. You're not supposed to or allowed to have any temporary signs and I don't have it in front of me but I believe this was something that was a concern and it may have been in the original version but she was not sure. *(in version of 11/8/18)*

Jon Daley said he didn't know what the point of that is. It seems to me there should be more information about permits

Robyn Payson-the concerns about temporary signs has been traditionally that it can become junky. People will put them out but not go get them. So I think that is where that problem came from. When

the Supreme Court made their decisions on signs they specifically did not allow there to be any differentiation between types of temporary signs. It used to be you could have something agriculturally pertinent like picking blueberries or something like that and that would be fine but contractors things would be a totally different matter. The Supreme Court said you have to handle them all or nothing. So it's terrible for this because temporary signs are a lot of different things and they mean a lot of different things but you either have it or you don't. If someone has something on their private property? I think that would probably be the right way to go about it

Jon Daley-I also wonder if a number of days could be added in to the definition if they could be allowed for a couple of days that would solve my problem.

Robyn Payson- That could be something we could definitely look at next year.

Jon Daley- The next issue is that it appears ...We had our two experts NHMA and the historic districts state person both of which very clearly said the Historic District Commission is not only in charge of certificates of approval for building permits but this document appears to pertain only to building permits so that is concerning to me.

Robyn Payson-The way that we have been looking at this and what we have before us right now is "base line". From what was in existence before and from Council's advice the original ordinance was intended to address building permits so what we are doing is clarifying that part of it. What you are starting off with is the basics. It doesn't mean that in the future or next year. It makes sense. Historic Districts deal with windows and doors and things on the front of houses and fences and that is absolutely appropriate. What really needs to happen is the Commission to work with the Planning Board on and because you need to have standards and regulations when you do something like that. Right now as you know there aren't any regulations and building standards right now that would apply to the current ordinance as it stands. Everything is arbitrary and opinion. Which is very hard because it's not enforceable in court; I think it would be a great idea once those regulations are all set to come to the Planning Board to talk about adding aesthetic requirements for fences and everything else so it can be brought forward and adopted by the town. I can pretty much guarantee you that if you put something on the warrant today and say the Historic District can have jurisdiction over signs and windows and doors and fences, it would not pass because people don't want to have something that doesn't have any kind of standards related to it. You can't say we are giving cart blanche" control without anything specific so that it why that wasn't put in this time we just wanted to get to the starting point which is really wat this is. Its clean, its legal it's in the zoning where it belongs and that's where we are. So it's not something that couldn't happen just at this point in time its further than where we are planning on going.

Laurie Jutzi- asked for guidance on how you keep trespassers off your property if you can't post a sign that says no trespassing?

Robyn Payson-That is not at all what this has to do with. That is a safety sign and that's not considered a temporary sign. You can post your property.

Laurie Jutzi- So that's a permitted sign

Robyn Payson-that kind of sign is a safety issue and is not addressed by a sign ordinance.

Laurie Jutzi asked if a sign was defined in the definition section because a sign is a sign to me. So being able to post-that is not something that isn't going to apply to me

Robyn Payson said that doesn't come under the Planning Board

JP Stohrer-To address John's concern as the chairman of the Historic District Commission our plan as soon as we get the Town Report in is to start working right away on the regulations. And the plan is to have a proposal for a change to the Historic District Ordinance for Town Meeting 2021 that will include fences and whatever is deemed appropriate.

He said he was a little concerned as the chair that a lot of changes were made to table 4 and the Commission was not made aware of any of them. He said he was not sure why and he knows the Planning Board is the "Grand Poobah" of land use I get that but there should also be interagency cooperation and he hopes in the future they can work more closely on these things so we don't come to a hearing at the last minute and find out "this is what it is".

That out of the way.229-1 section 9.4 at the very end it lists two RSA's 674-46-a-674-50.

Something that was discussed previously were the words "appropriate" and "appropriateness" . These are very subjective terms. I am not sure what the answer is to replace it with but one person might say something is appropriate and someone else might think it isn't appropriate. I think it should be more specific to what the requirements are than are written up.

Gary Sparks- That's why you get to write the regulations.

JP Stohrer- That's' right but as long as "appropriate" or "appropriateness" take precedence is in the ordinance that takes precedence because the regulations because the regulations are the things that we use that the ordinance refers to. I would like to ask if you would consider ...it only occurs in a couple of places but I think it's too ambiguous.

Gary Sparks I think there are times when you don't want to get too specific about some things and just rely on the judgment of those who are doing the enforcement work

Robyn Payson-I think what would make it a lot less...because I agree with you. I hate arbitrary provisions all together but when you have regulations its going to be "is it appropriate to the regulations" so you will have standards. I think this is something good to talk about to talk about next

year, I don't think its going to hurt anything right now. Its kind of developing still but I agree with you that it is something to talk about.

Gary Sparks- Yes, see how it works. When you do something new like this you are going to find places like this, invariably you find places like this where you need to tweak it in the future and you usually learn where those places are because of the usage as the experience comes up. Certainly that is why we amend things.

JP Stohrer- It's not a deal breaker but

Robyn Payson-it's something to think about. Just one other thing, I hear you about the uses I understand that is something that the Planning Board went through is the uses are the responsibility of the Planning Board and to point out all of these meetings were posted, as you know you were there the workshops were posted and there was not a lot of turnout from the center.

JP Stohrer-We were all here

Robyn Payson-We only had four people from the center

JP Stohrer I was here, Jay was here Margaret was here

Robyn Payson-I am not talking about the Commission I am talking about the residents. They have been notified this has been on the agendas this has been very clearly something that the Planning Board has been working on. I agree that there definitely be communication so that there is understanding on both sides. I don't want you to think this was going on behind anybodies back. It was just the Planning Board doing its job.

Gary Sparks- And frankly to add to that the Planning Board has had quite a long discussion on these we didn't just haphazardly throw a dart at the board and say to change this and that. We really took a long hard look at these changes and again we will find out with usage and make some changes later. You may recommend some changes or think its ok.

JP Stohrer- I understand that. These changes were incorporated without notification of the Commission. We worked very hard on the Rules of Procedure one of the things that doesn't agree between the ordinance and the Rules of Procedure is the use of the word "disapproval" and "denied" as far as applications go. We thought very long and very hard on this and thought that "denied" was a better term than disapproval. They basically mean the same thing and there may be other people who want to stand up and talk about this as well. I know I am over time, I am hoping some others will stand up and talk about the last things

Gary Sparks- Well you will have three more minutes we apologize for causing you to run over because we wanted to reply to some things that you said. It's a good point to keep in mind its easy to forget but when you do get something like this invariably when it is put in to practice there are things that you find that you need to fine tune. I think some of the things you suggested will fit in to that category.

Mary Morehouse Rogers-I would like to address what John said about the temporary signs and perhaps giving us a certain amount of time. As a realtor in town it is very important because not everybody has a GPS or a directional sign down or a house for sale sign on the street. Now typically when that happens we put them up a week, maybe two weeks because we do get a fair amount of buyers that follow a sign like that. I can guarantee you I'm the only Real Estate office in town that's going to feel this way. We have a fair amount of properties for sale let's say the Emerald Lake District...

Robyn Payson-This has nothing to do with Emerald Lake, this is specific to the Historic District. I believe we regulate them for the rest of the town. Its either all or nothing that's the way the Supreme Court came down. You just have to blanket allow everything or not at all.

Mary Morehouse Rogers So in the Historic District I could not put a sign at the fork in the road

Robyn Payson-You could put it on private property

Mary Morehouse Rogers If I got their permission

Robyn Payson-yes

John Segedy-First of all on the last point there that you can put something up on private property. The whole reason for the regulation is to tell you what you can't do on private property. But to continue on this whole sign ordinance I do not think it's enforceable at all the way it's written. No Temporary Signs at all. There are some signs for instance political signs; I don't think you can legally prohibit those. And under the Supreme Court's ruling that you referred to, you can't if political signs are allowed you can't not allow other kinds of signs. I think you are opening up a can of worms here if you ever try and enforce that. I think you are just creating a problem that you don't need to create. I would suggest you consider just removing that sentence. And another point that John made on that same issue, Jon's concerned about that issue the summer History Alive thing if that is affiliated with the town just a little bit. The town doesn't have to follow its own rules even though that's what they do.

Kay Bennett-Maybe I'm off base now because what has been said when we did do the Temporary Sign for History Alive, everyone was given the choice to have signs on their property or not. Maybe I'm wrong but we were all given the choice.

Melinda Gheris-First of all I would like to thank you for the work you have done to get us to this point. I know how much work this has been and I appreciate it. I want to address the issue of appropriate and appropriateness. One of the things that Robyn said a couple of minutes ago is that it's very important that this document be clean and not create problems and I echo what JP said I think "appropriate" and "appropriateness" as used in the statute are opening a can of worms. Even when we have the regulations and the rules set I think those create significant legal issue for not only the Historic District Commission but for also the town. I think there are other terms you might consider like "comply" or "in compliance with" that might be less of a legal problem for the Commission and for the Board and I'd ask you to reconsider whether this is the time to make those changes. JP also mentioned the term "denied" and I don't agree with him that they both mean the same thing. I think that's another legal issue that

provides opportunity for someone to argue whether disapproval and denial is the same thing. If a permit is denied it's denied. I think that's a much clearer and stronger word and would ask that you consider that instead of "disapproval" and the last point is a specific one on the Chart of Permitted Uses and that's the Two Family Dwelling. It is now listed as a Permitted Use and I would ask to you consider change is to permitted by Special Exception. As I have been driving around some other towns recently I have noticed that there are two family dwellings in the Historic District Centers that I wonder quite frankly how they got there.

Margaret Seymour- On this same subject, in my original notes that was crossed out. That is not permitted Two Family Dwellings are not permitted.

Robyn Payson- That was the discussion last year

Gary Sparks-That was from last year in the discussion before the work was tabled last year and when we brought it back for consideration this year we discussed the various permitted and not permitted uses and uses that were permitted with Special Exception. That's when that was changed. And I think I can say safely that again when we had the workshops on Historic Districts basically that is a permitted use in historic districts. It can be a permitted use in historic districts.

Robyn Payson-I spoke to the department of historic resources on that question and two family is a historic use a lot of houses (I have a house in my neighborhood that is almost 300 years old and was built as a two family. One of the questions I have had is ...All of this has been reviewed several times by Town Counsel so I think we can pretty clearly strongly stand behind the fact this is a legal document. I don't know why there is a problem with a two family house. If someone is building one from scratch the Historic District Commission has complete control over the aesthetics of that building. So it would look however you wanted it to look. So you wouldn't necessarily know it was a two family. Town Counsel has suggested that we leave it as permitted and honestly I don't understand why you would not want it...There's two things. I don't understand why you would not want it and what would the conditions be, what special conditions would someone need to meet in order to have (a special exception) or divide their house in to two families.

Margaret Seymour-There have been no two family homes in the district. That is the historic reason it is a historic district.

Gary Sparks- Again, Margaret in a historic district it is recognized that is considered to be an appropriate usage. And if it were pushed heavily down the road the town could get in to trouble with it and so we need to be realistic and go with what is proper and kind of push back what isn't. And this is considered a proper use in historic districts and it might not be done with homes in the center but I wouldn't argue with the fact historically duplex type buildings or homes were definitely part of historic structures. And it doesn't mean as Robyn just pointed out that the appearance of the building are necessarily changed and the aesthetics are the preeminent thought here. For historic districts appearance is the thing, what you can see from the road and that's just merely having a two family home does not mean that the appearance of the building is going to be any less aesthetic and that's why you have a commission who can make sure that appearance remains appropriate.

Robyn Payson- Something I am not sure everyone realizes that by state law Accessory Dwelling Units are allowed in every Single Family Home. An Accessory Dwelling Unit is not considered a Two Family. An accessory is a significantly smaller apartment. It's an in-law apartment. We are following the law and we have to allow them in town, but it's the same thing. it will not be seen from the road its not going to impact the aesthetics.

Gary Sparks-and that's another one of those things that you chalk up under "the times they are a changing" and this is one thing that has come to be recognized in recent years.

Bob Hansen- And to that point Margaret, when I made the motion to strike two family homes from the permitted uses in the Historic District I did it without knowing the full intent of New Hampshire State Law on Two Family Dwellings in a historic district. I got my hand slapped by Town Counsel for doing that. I was just trying to help. But by doing that, it set the town up for more legal liability if somebody who comes from a Historic District and wants to put a two family in what is already existing there with the same look and aesthetics from the road. I was clarified on that. That's why we had to make that a permissible use because you cannot segregate that from other historic districts where people have that. I pleaded with the board, they know me and my integrity and that's why they agreed with me to remove it and I was wrong. What I did wasn't wrong but by not knowing the full historical significance of the two family dwellings in a historic area that's why we had to make that a permissible use.

Margaret Seymour-We don't really know what the historic district includes. We need a survey there's a very large piece of property in the district if we go by the 1000 yard rule that property is not included

Gary Sparks- That isn't something that we deal with

Robyn Payson-All we have are the deed references from chapter 38. Unfortunately that's not the Planning Board that would be something you would go the selectmen about.

James Bailey-We are discussing it.

Robyn Payson- A possibility is ... I am not a big fan of properties that are partially in one zone. Its very confusing. I don't see why we can't expand the district to include the entire property if a part of the property is in the district. That makes sense to me. So that looks like an option. When you do something like that you need to bring in the property owners to discuss it so they don't feel steamrolled. That might be an easier way to handle it.

David Rogers-(pointed out typos) To the point about "appropriateness" and the use of that language. Generally speaking when ordinances and legislation is created instead of trying to list every possibility, legislation gets in to terms sometimes "appropriateness" frequently you see "reasonable" what a reasonable person would to or what a reasonable use is subject to some interpretation not only presently but down the road. Ten or twenty years from now, what is reasonable now may not be reasonable then and vice -versa. So the use of these types of terms as undesirable as they may be and as indefinite as they may be are frequently used for that reason. If you try and list every possible thing you are bound to miss something.

Bob Hansen- And you make a good point under that wording that anything that is done in a reasonable way has to be consistent down the road.

Jay Emmert-I do know a lot of historic buildings that are two family. I think what we are afraid of is someone will come in and either build two split level ranches' that are connected or those horrible duplexes with the light blue bottom and the white top with vinyl siding and the Historic District will say I'm sorry but that's not appropriate and we feel like the Zoning Board is just going to say who the hell cares what you think and let them do whatever they want. So we want to know if someone would back us up if we said we didn't think the front of the building was appropriate.

Robyn Payson- When you have your building standards that's how you control how that building looks. You decide how you want the building to look and if its no, its no and you have regulations to point to justify that. Then it cant be considered just someone's opinion. That's where you get in to trouble and that's where we are kind of in trouble right now which is fortunately going to change. Its not certainly the duplex with the two doors, not at all. It's the aesthetics. That is what the Historic District Commission is in charge of.

Jay Emmert That is why we chose our house. It s quiet up there and we struggle but we try to keep the houses looking nice. And we like the community feeling that is up there. It's a wonderful place to live it's a gorgeous place to live and those of us that live there would like to think that its always going to be a nice place to live and not have to keep looking over our shoulder and thinking oh god what is town hall going to do to us now.

Gary Sparks- I think adoption of this is going to make you all know you are not going to have to look over your shoulders and again keep in mind, I really think this is one of the key things here for everyone to keep in mind. Historic Districts...aesthetics. What does it look like from the road and remember we are telling people what to do with their private property. We are going to be careful and we want the place to look good. One of the first things I ever saw in Hillsborough was Hillsborough Center. My wife wanted me to move here because she knew I was a sucker for that stuff and it worked. So we don't want to change that part of the character of that area but the thing is aesthetics and the commission that works with this will be dealing primarily with that. You all will have some sort of say-so in how things look but remember you will be if you are on the commission just like we are here. We are telling people what they can or can't do with their property and that is something to be taken very seriously.

Robyn Payson-And the whole thing is in the building standards that will solve 99% of your problems. When you have those building standards to refer to then we can work on the standards for windows and doors and things like that and do it in a methodical way so that there isn't misinformation or confusion. I have a 250 year old house and I am a Daughter of the American Revolution so history is very important to me, and you have a beautiful center the last thing I would want would be for that to be ruined. I don't think that we are looking to find ways to make life harder. Its messy because it was out there in the ether for so long and we have got to bring it in to compliance and sit down together and work on it next year.

Jay Emmert- That's why I think we all objected to the two family because we saw developers coming in and grabbing..

Bob Hansen- Your perception yes if you delve into the historical of what a two family was like in a historic district

Jay Emmert-I grew up in Lawrence and there were two family and three family's that are actually gorgeous homes in the beginning of the 19th century. It can be done.

Jon Daley-Don't forget about the temporary signs when we talk about making this the base for starting next year or whatever. I would propose that we remove the line now and fix it for next year. With JP's concern I read all the agendas and all the minutes of every board in town and I go back to the minutes and according to the minutes you did not have extensive discussions so I am concerned about that and I also think it would have been good if you had those kind of conversations because we are right in the middle of this in the Historic District that JP should have been notified I don't think he has to read every agenda So in the future I think you should it's easy to e-mail. Oh the lawyer stuff. When NHMA was here he very clearly said that we can do whatever we want, take stuff out, put stuff in. So while its probably true Town Counsel has seen it and its legal it's also legal to make changed it so it's not really an argument to say some of these things can't be changed. The lawyer that came says differently from the other lawyer like the former chairman said one lawyer's interpretation can be different from another lawyer's interpretation.

Mary Morehouse Rogers –Just going back to what Jay said when we list a home in the Historic District we have a fiduciary to the seller or the buyers and they have them check on what the requirements are and what you can and cannot do. That is something that is in our Code of Ethics.

John Segedy-I really do think you need to take that temporary sign out. Just to be clear all of these other ones you were taking about responding back to people. When I brought up the question about what Robyn said she had made the statement that you can put these signs on private property. Being the confusion as to whether you can or can't, if you guys aren't even clear about what can and can't be done you have to remove it. I don't have a real stake in this ordinance I don't live in the Historic District as long as everybody who lives in it is ok with it, I haven't heard anybody aside from particular points being against it. I have no problem with people choosing if that's what they want to do as long as they want to do it that's fine but I am concerned about a situation where we are going to be paying multiple lawyers to figure out whether or not this is being enforced correctly. I think this is just opening up a big can of worms and you will be dipping in to our pocketbooks to pay-off those lawyers.

JP Stohrer-"Community Center" is Special Exception what was the thought process behind putting a Community Center in a spot where there would be large parking lots with multiple cars coming and going. What sort of Community Center did you have in mind when you decided to allow this.

Robyn Payson-You have the Club House and the point of going for a Special Exception is that the ZBA takes all of that in to account they wouldn't allow a 20,000 square foot parking lot. It depends what it is. It could be someone has a house and they want to have their house converted in to a Community

Center. Maybe it would work maybe it wouldn't but that is why there is a process to go to the ZBA. It has to meet the conditions of a Special Exception in order for it to pass. I don't think there are a lot of things that could get a Special Exception there because building it from the ground up you are not going to put a 10,000 square foot building up there.

JP Stohrer-I just don't see how it fits in the Historic District and suggested it be taken out.

Robyn Payson- I would make a suggestion, after Town Meeting if we can get this through that we have a co-meeting and go through it line by line and see what kind of adjustments need to be made.

Gary Sparks-It sounds to me like the kind of thing more unlikely to come up But if we want to get rid of it next year.

JP Stohrer This goes back to my point that the Historic District Commission was not contacted. We didn't have a chance to have this discussion.

Gary Sparks- At this point it is irrelevant because we are considering what's here. I understand what you are saying but for our purposes this evening we can say if a Community Center comes up 10 months from now and it doesn't look like Community Centers should be in there we'll take it out next year.

JP Stohrer-The point is now we don't have a choice.

Gary Sparks-I don't think its going to be an issue

JP Stohrer-Its not so much the issue of there being a Community Center there it's the issue of communication. "Agritourism" what sort of thinking was behind that in the Historic District?

Robyn Payson-It's a subsection of Farming. Its defined in the RSA's

Adam Charrette- History alive would be Agritourism

JP Stohrer About the two family dwelling is there a specific RSA or statute that says we would get in trouble if we didn't allow them in the Historic District. Town Councils said we have to do this where is the limit does it apply to 3 and 4 family?

Bob Hansen-Because two family if anyone knows anything about historical buildings will know two family homes are in a number of historical districts throughout this country.

Robyn Payson-Three and four family are not allowed.

Bob Hansen-Because if somebody is a real history buff and wants to buy one of those houses and wants to convert it to a two family and the outside which the historic district is in charge of doesn't change then how can you say no.

JP Stohrer- You said there was a legal precedent by statute I just want to know what that is.

Gary Sparks- Our legal reasoning behind this, I don't remember all the specifics is the fact we have had a couple lawyers tell us you can't forbid it.

Robyn Payson-It's really not a good idea. There is no real reason other than you just don't like two family houses. And the Planning Board according to Steve Buckley is what addresses uses. And is it an appropriate use for that district. Maybe you don't like them, maybe you don't like someone making a house into a two family but that doesn't mean it's not appropriate or a use that should be not permitted.

JP Stohrer-You said you were going by a legal precedent and we don't have one.

Bob Hansen-The problem is when you are splitting hairs to the point of trying to pick apart every RSA what's going to happen is an 8 Month debate over everything that goes on in the Historic District. That's why the two family, and I really don't think you have to worry about it but if someone wants to exercise their legal right to modify the interior of their building to make it a two family they can because it has nothing to do with the aesthetics of the outside unless you are having doors and everything else.

JP Stohrer-But you are also having cars, slides and other things

Gary Sparks-That's not what we are here for JP, thank you

Margaret Seymour-We will remember

Gary Sparks- I know you will Margaret. ok is there anything else because it has been said a number of times that we are not allowing people to participate in some manner. All of our workshops were noticed and all our agendas and meetings are always public and when we had not only the workshops with the state officials and Municipal Association. We had our workshop meetings they were very poorly attended in general by members of the public. We took a great deal of time with this and I will say that after a period of a couple of months it is hard to remember some of the specific details. We have had plenty of time to have many of the points that have been brought up here this evening brought up and we want to move this along and that is our purpose of the hearing this evening and if the board so approves we are going to put this on the ballot. But keep in mind as I have said earlier, with all legislation of sorts whether it's an ordinance such as this here locally or with any law passed by any law making body you give it a chance and see how it works and if it needs to be tweaked we tweak it. I think that basically we have a good document here, it has been examined us and by lawyers. Can you get two lawyers to always agree on everything? Probably not, but certainly we have not been negligent in dealing with this. If problems develop, and I doubt seriously at this point any serious problems will develop we can make changes in the future. So we will find out and we won't know until we have something to work with and so that's why we're here tonight and if the Board so wishes we will move this on and we can get a good night's sleep and worry about this in the future.

Before we vote I would like to thank everyone in the audience. You have been very nice to deal with this evening and bringing up some good points for the future and also I haven't seen some of you for a

little bit so hello and it's always nice seeing you. Having said that I want to know if I hear anything from the board.

(See motion in the minutes)