



Town of China

571 Lakeview Drive; China, Maine 04358
(207) 445-2014 info@chinamaine.org

Approved by Planning Board by a vote of 5-0 on March 2, 2023

Planning Board Work Session and Meeting
Meeting held in Meeting Room at China Town Office and via ZOOM
February 14, 2023
Begin 6:30 PM

Board members in attendance: Toni Wall, James Wilkens, Natale Tripodi, Walter Bennett and Michael Brown

Attendees: Select Board Members: Brent Chesley, Jeanne Marquis and Blane Casey; Town Manager Rebecca Hapgood; Appeals Board Member Alan Pelletier; Cathy Chesley, Mary Grow and Amber French

Assistant Code Enforcement Officer Nick French - Present

Board meeting opened by Chair Wilkens
Pledge of Allegiance to the American Flag

Chair Wilkens brought Board Member Tripodi into voting capacity

Review/Approve Minutes January 24, 2022 Meeting

- Chair Wall motioned to approve minutes as written.
- Board Member Tripodi seconded motion.
Unanimously approved. No further discussion.

Work Session - Review proposed changes to Chapter 9 of the Land Use Ordinance

- Chair Wilkens opened work session discussion on Chapter 9. He thanked the members of the Select Board and the Appeals Board for their attendance. Chair Wilkens explained that for the Planning Board, Chair Wall and himself are co-chairs. Chair Wall referenced the Select Board meeting held on February 13, 2023. She continued to advise that there were some good comments from the Select Board, Planning Board members in attendance and China residents that were in attendance. She further advised that she would like to go over a few items that might need to be added or changed based on the February 13th Select Board meeting conversation. Chair Wall explained she has had a chance to read the February 10, 2023 draft and inquired if others have had a chance to review. She continued that they will be going through tonight. Chair Wall advised of changes needed to language such as Select Person needs to become Select Board. Chair Wall confirmed there is one member of the Appeals Board present.
- Chair Wall explained that one change that is needed in Section 1 is Select Person should be the Board of Selectmen. Chair Wilkens advised of the possibility of electing a secretary. He continued that they should have a secretary. Town Manager Hapgood explained that the Town hires someone to come in to do the minutes like the Planning Board secretary. Chair Wall explained that she has read Planning Board ordinances, and advised she would like to see added



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the requirement of taking the MMA course would be an excellent idea. She continued that she would like to see a responsibility for the members of the Board for Appeals to become familiar with the ordinances in Town they would act upon, along with becoming familiar with the Comprehensive Plan. Selectman Chesley states he thinks would be a good idea for the Appeals Board members to be familiar with the ordinances but is concerned that it needs to be worded to make sure it is not a disqualifier. He continued that it could open up the possibility of one of the members to challenge in court where they may not have known an ordinance and someone thought they should have. Selectman Chesley explained that a lot go to court and need to look at potential to challenge of not just the decision but the procedure. Chair Wall questioned the use of “familiar” as it is a broad description. Selectman Chesley explained MMA training would have a certificate but without a written test, is not sure how to prove someone is “qualified”. Chair Wilkens explained he does not feel there needs to be a written test as the position is voluntary. Chair Wilkens asked Appeals Board Member Pelletier if he feels he would need more training beyond MMA course? Appeals Board Member Pelletier states he is taking the MMA course this week and does not feel he needs additional training besides reading ordinances. Chair Wall explained that it is being familiar with the ordinances and comprehensive plan but memorizing every page or the need to be certified. Selectman Chesley states that the Town attorney needs to review any changes to advise how will affect the Town if challenged. Board Member Brown cautioned on complicating the requirements too much and making board recruitment all that more difficult. He continued to advise that they need to make it clear these are the expected requirements and that they need to be stipulated up front. Chair Wall explained with the Planning Board, the members need to familiarize themselves with the ordinances. Board Member Brown suggested having training prior to putting name in. Appeals Board Member Pelletier explained he cannot memorize so he goes back and researches. He further explained a tabbed the manual would be helpful. Selectman Chesley explained that if someone asks him a question, he usually states that he would need to look up the answer. Chair Wilkens suggested that maybe the Planning Board could offer training to new members of the Appeals Board and the Select Board of Land Use Ordinance and answer any questions they might have. Selectman Casey explained that many towns have volunteers on boards and that they do the best they can but that the same time they need to try to protect themselves. Chair Wilkens commented that they need to offer trainings to help people and to protect themselves.

- Chair Wilkens advised he has questions about the staggered 3-year terms in Section 1. He requested confirmation that the term is currently a 5-year term? Selectman Chesley advised they are changing from 5-year to 3-year term and not sure of how currently staggered. He continued will be a few 1 year and then 2 more another year, and 3 the next. He further explained that you would not want a whole new board. Chair Wilkens advised would be similar to how Planning Board is staggered. Town Manager Hapgood explained that other purpose of the shortened amount of time, you may get more involvement and maybe more enticing. Selectwoman Marquis inquired into a list of causes for dismissal from board. Selectman Chesley explained the section is verbatim from the statute. He continued that one could be if someone showed definite bias or had a criminal conviction such as a felony or a violation of the code. There was also mention of having a conflict of interest and the need to recuse. Chair Wall explained the Planning Board ordinance has a list of causes and she read aloud. Selectman Chesley advised to add “not limited to” to language. Selectman Casey concurred adding that there could be something they have not



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heard of yet. Chair Wilkens explained they need to make sure people understand. Board Member Bennett explained needs to be in understandable terms. Chair Wilkens explained they were asking since is in Planning Board ordinance.

- Chair Wall advised has question of Section 2 – Organization in regard to Chair or Designee? She continued that there would be a Chair, a Co-Chair and a Secretary. There was discussion on having a designee and how designated. Selectman Chesley advised he is not sure they would want a designee? He continued that in statute, the Chairperson is the one to facilitate the meetings and it is important that the Chair needs to be there. Chair Wall gave an example if the Chair has Covid and are on a timeline, would there be a Co-Chair or Designee? Town Manager Hapgood explained that what they do is provide a list of dates to the Chair that work and then reaching out to the other board members. Selectman Chesley read definition of chairman. Chair Wall explained that then need to have a Co-Chair or get rid of the word “designee”. Chair Wilkens suggested the language of “the chair should call meetings of the board as required”.
- Chair Wall advised that one thing she doesn’t see from the original is “the proposed use would meet the following standards” and questions if they are truly eliminated? Selectman Chesley stated that they are crossed out on his version and explained he emailed why they needed to be removed. He continued that some are not defensible in court and saw issues and did not think they should be in there. He further explained that the majority of the Select Board agreed to removal. There was some discussion on need to be in but not crossed out. Town Manager Hapgood advised she had a conversation with Attorney Meader and explained there was some confusion as Attorney Meader was under the impression these were the final changes when in fact they are not. She continued that she will be working with Attorney Meader to correct. Chair Wall states she will be willing to help if needed. Chair Wilkens stated they should be back in but crossed out.
- Chair Wall opened discussion on Section 3 – Variance Appeals. Chair Wall advised of missing section from updated copy that was in the original. She read section that is missing from updated copy. Chair Wall questioned if it needs to be in there? Selectman Chesley clarified by explaining that currently lots that are less than 20,000 square feet are not allow to be built on. He further explained existing allowed resident structure with less than 20,000 square feet, you have the right to expand up to the same standards as anyone else. Selectman Chesley explained that in the original ordinance, it restricted anyone with less than 20,000 square feet from being granted a variance. Chair Wilkens advised if under 20,000 it is a non-conforming lot and is different from someone who has a lot and can do the expansion. Selectman Chesley advised they are still allowed to expand if they are grandfathered. He further advised that by removing wording, it allows for a grandfather structure to be granted a variance if can show undue hardship. Chair Wilkens explained why a non-confirming lot would be denied a variance and this would only apply to a select few. Selectman Chesley further explained it does not give the opportunity of a variance to build on, but only allows grandfathered structures to make improvements or expansion. Selectman Chesley read section. Selectman Chesley advised that the only variance that can be granted in shoreland is a setback requirement for a single-family dwelling that is the year-round residence of the petitioner. He continued they would have to have an existing



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structure and the only variance that they can be granted is a setback in the Shoreland district. Chair Wilkens states he feels they are eliminating for only a select few and does not agree with removal. Chair Wall advised section needs to be put back in. There was discussion on why they are making the change and the need to make the change. Chair Wilkens explained they cannot create an ordinance that will do everything for everyone. Selectman Chesley advised that undue hardship is hard to prove and this would be restricting the right to a variance. Ms. Amber French asked for clarification on 20% setback variance and she gave the example that she owns a home and part of that home needs to be replaced. She continued in addition that they have had another child and since they need to replace or repair anyways, they are looking expand. Ms. French further explained that according to variance it could be possible for them to expand since it is a need and not a convenience. She asked if she is correct in her assumption that she may qualify for a variance under these circumstances? Selectman Chesley responded that he is unsure if that would constitute undue hardship or not. Ms. French questioned not sure where would come up? Board Member Bennet advised that there has been no mention of a concrete example of a variance that would meet the conditions and would like to hear an example of one that would meet such strict conditions. Appeals Board Member Pelletier suggested a wheelchair ramp to which Selectman Chesley responded this would be different for disability variances. Chair Wilkens advised that would fall under ADA. Town Manager Hapgood advised she spoke with the town attorney and they are in agreement that the ADA should be added. Chair Wall state that the disability variance is very clear cut and gave the example of a temporary ramp but the expectation would be that it would be removed within 6 months. Board Member Bennett gave the example of a family member that is permanently disabled moving in and inquired if would need to go to Appeals Board for variance? Board Member Bennett asked for additional examples and clarified that it would be a yes, to the request for a disability variance and a no, to having more children. Chair Wilkens asked if was unanimously approved by Select Board? Selectman Chesley advised was not. Chair Wall requested that the section be added to back in since has been there for years with no issues. Selectman Chesley states he is not aware of any situations. Chair Wilkens states that he does not agree with removing if there have been not known issues and has worked well for the town. He continued to explain that they have set precedence and to change it now may cause issues with prior requests. Assistant CEO French advised there are 23 properties in town that cannot meet the 100-foot high-water setback. He continued to advise that they are not allowed to do anything including construct a gravel pad to camp on but can construct a 6-ft meandering path to the water. He further advised they would not be allowed a variance. Selectman Casey confirmed that a non-conforming lot with no structure would not qualify for a variance. Selectman Chesley advised of comment made at Select Board meeting and advised does not affect him. He continued that he is looking out for others in town that they could potentially limit their rights and feels the section should be deleted. Chair Wall inquiring that when goes for public hearing, is there a way to show the Planning Board decision and the Select Board decision? Chair Wilkens explained the votes would show for each board and gave an example. Board Member Brown questioned if they were to omit section, is there any predictor of how many variances would come about? He continued to explain that he is just trying to get any idea of the realm of work it would cause. Selectman Chesley advised he is unsure of number. Board Member Bennett inquired into who is responsible for determination of meandering path on a non-conforming lot? Should the Planning Board be looking at and not the Appeals Board? Selectman Chesley explained the variance cannot be granted for a use that is already prohibited and the only variance



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in the shoreland district is a setback variance. Board Member Brown inquired if decision would come back to Select Board or Planning Board? Selectman Chesley further explained that the Appeals Board makes the decision and a person could appeal the decision. He continued that only the Appeals Board can grant variances. Board Member Bennet voiced his concern that that the Appeals Board is the only decision on the matter and does not come before the Planning Board or Select Board regarding use. Chair Wall explained that is why statement is in there and is strictly a “no”. It was advised the rules are already set in ordinance regarding non-conforming lots. Selectman Chesley explained that the variance cannot be granted to change a use, they have to have a year-round residence, already existing on parcel of land. He further advised this would allow individuals the right to a variance. Board Member Bennett reiterated that these were set up for certain reasons and have served the Town well. Selectman Casey advised if is only a non-confirming lot with no structure, they cannot change a use and cannot build on. Board Member Bennett questioned Selectman Chesley why the change is needed? Selectman Chesley responded he feels it is too restrictive. Board Member Bennett asked Selectman Chesley if he has spoken to anyone with this issue? Selectman Chesley advised he has not. Chair Wall motioned to keep the section in the ordinance. She explained that when they go to public hearing, it will be advised that the Select Board has voted to eliminate and the Planning Board vote. Board Member Bennett seconded the motion. Chair Wall, Chair Wilkens, Board Member Tripodi and Board Member Bennett voted in favor. Board Member Brown abstained.

- Chair Wall advised of section on dimensional variances and stated that this would be the section where the disability variance would be. Chair Wilkens read section regarding written consent from an abutter and stated he does not agree with change. Selectman Chesley advised was another disagreement within Select Board. Chair Wall explained section is in red on Selectman Chesley’s copy and is an addition. Chair Wall confirmed is in state regulation and is a “may” add in and not a “shall”. She continued that she has read 13 ordinances from other towns and statement is not included. Chair Wilkens advised he does not agree and feels this would weaken the ordinance. Selectman Chesley advised that the maximum setback allowed can only be 20% of the requirement. He gave the example that the Town setback is 10ft, a variance up to 2 feet can be granted and this also pertains to waterbody or wetland. Selectman Chesley read the section aloud and gave example of going to neighbor and asking for written consent for 4 extra feet. Chair Wall explained that she has issue with written approval of the 1 abutter and stated that she prefers not to have there. Chair Wilkens concurred that he also prefers not to have in there and explained that they can be stricter than the state statute. He continued that it could cause issues if one abutter says “yes” and the other abutters are not in agreement. Selectman Casey stated that the other abutters are not being affected to which Chair Wilkens responded they are still abutters and pits people against each other and can cause issues. Chair Wilkens advised they need to protect the Great Ponds and he does not want to make it easier to affect the lake. Selectman Casey advised they have done a lot of work to clean up. Selectman Chesley advised it pertains to rural districts and not just the shoreland. Selectwoman Marquis advised that most of China falls within a watershed. Chair Wilkens advised of stream protections as well. Chair Wall gave the example of giving permission to add on and a comment that was made at the Select Board meeting regarding Registry of Deeds. She continued that it was advised is could present a problem to the registry of deeds is property is sold. Chair Wall explained should be advised by the Appeals Board to submit to the Registry of Deeds. Chair Wall questioned what to do about the statement? Chair Wilkens



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questioned what is precipitating the need for the language? Why is it being considered? Board Member Bennett states that there has been no petitioner with the hardship and is not sure why the section is being reviewed if there are no issues? Chair Wilkens advised of other towns if there is no agreement of the abutters, there is no change. Chair Wall explained she can see potential for issues as it has not been in there and no one has come forward with an issue. Chair Wilkens states he feels all boards need to be in agreement of change. Board Member Bennett advised there needs to be a justification. Board Member Brown questioned why only a singular abutter, not all? He continued by providing an example of harvesting wood and have 3 abutters, this would affect the lighting of their properties. Would it make a difference if was worded as “all abutters”? Chair Wilkens and Chair Wall stated they would be more in agreement if it was “all”. Board Member Brown inquired if there are other ordinances that require all? There was further discussion on why change is needed. Town Manager Hapgood suggested that the Planning Board take a vote and move on from that since there is disagreement and the Select Board can make their determination. Chair Wilkens explained they were not sent an ordinance and advised of process. There was some discussion on emails sent regarding ordinance process. Chair Wilkens states that if there is this much dissention over one line, why not take it out? Board Member Brown inquired if the exception of the meeting is to review and to send back to Select Board? Appeals Board Member Pelletier inquired if this should be sent to the town people to vote? Chair Wall explained should take a vote and results will be shown at the public hearing where there will be a discussion. Ms. French advised that it was not a big study of only 13 towns. Chair Wall stated that she looked at towns that had great ponds and look all over the State. She continued that that many were very similar to proposed changes. Board Member Brown can they make a decision? Chair Wall motioned that the section, upon writing consent of the abutting land owner, should be stricken from the current version. Board Member Brown not sure why Planning Board is voting now as he thought this was a discussion. Chair Wilkens advised they will write their version and will send to Select Board for review. There was discussion on Select Board votes, if the Planning Board was going to review and process that was followed. Chair Wilkens states they are doing with everyone involved. Board Member Brown states that it is apparent both boards have differing opinions and would it satisfy all parties if they came up with a time line? Selectman Chesley inquired if it is for review and comment? Chair Wilkens stated that the ordinance is not a done deal. Board Member Brown again questioned if a timeline would be acceptable for all involved? Selectman Chesley stated that the intent was for the Planning Board to review and comment and that it was unclear in January when review and feedback would be coming as they were looking to have on ballot in June. He continued that this should be enough time for feedback from all involved. Board Member Brown requested that all involved pick a date? Town Manager Hapgood explained that Planning Board last meeting is February and need a month to make sure numbers are ok. Chair Wilkens explained they agreed with most of the changes. He expressed concern that the Planning Board recommendation will not be taken into consideration by the Select Board. Selectman Chesley advised they are there to get feedback. Chair Wall advised that since the other 13 are so close except for the written consent section, she would recommend crossing out wording and send back to Select Board. She inquired how the Select Board would handle? Board Member Brown confirmed they will get to Town Manager Hapgood by March 1st and this is satisfactory to all. Selectman Chesley stated he has no issue with review and started process. He continued that the bulk of the Appeal ordinance is administrative and is appointed by Select Board. He further advised that he felt that setting timelines is in the wheelhouse of the



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Select Board. Selectman Chesley advised that the final draft will come from the Select Board. Board Member Bennett explained that they agreed with most changes but struggles with language to weaken requirements. Board Member Brown questioned if they are having a public hearing for considerations and then there will only be one draft at the public hearing? There was discussion on the final draft coming from the Select Board and the recommendations not being taken into consideration. Board Member Brown stated to Selectman Chesley that what he is hearing is pitting board against board and is not hearing this is for the good for all. He continued that it sounds adversarial and that changes made by the Planning Board will not be taken into the consideration. Selectman Chesley explained that the final draft with all considerations will come for the Select Board. Board Member Brown motioned that Planning Board version be back to Town Manager sometime on February 28, 2023. Chair Wall seconded motion. Unanimously approved. Chair Wall advised she will work with Town Manager Hapgood to get the right version. Chair Wilkens appreciated involvement of everyone and explained Planning Board duties.

Make changes to language in Planning Board Ordinance

- Chair Wilkens advised Chair Wall has printed updated language for Planning Board Ordinance and they will discuss along with the comprehensive plan at the next meeting.

CEO Report

- Assistant CEO French advised that he has issued 8 building and 8 plumbing permits. He also advised of a sub-division permit request that will be on agenda for February meeting.
- Assistant CEO French explained the amnesty program runs out at end of month and he is working on closing out permits.

Future Schedule and Adjourn

Next Planning Board Meeting: February 28, 2023

Motion to adjourn meeting made by Chair Wall

Motion seconded by Board Member Tripodi

There was no further discussion and the motion to adjourn was unanimously approved.

Respectfully Submitted,
Dawn Kilgore
Planning Board Secretary