

## Preliminary Minutes

### Plymouth Planning Commission and Zoning Board of Adjustment January 6, 2026 Meeting

The January 6, 2026 meeting of the Planning Commission and Zoning Board of Adjustment was called to order at 6:00 P.M.

Board members in attendance were Bruce Pauley, Anne Brown, Frank Vetere, and Mike Scomillio

Audience members in attendance were Jennifer Milano, Kevin Geiger of Two Rivers Ottauquechee Regional Commission, and Willem Bargfrede of Okemo Valley TV. Ari Lattanzi of TRORC attended via Zoom.

Bruce Pauley made an addition to the agenda to discuss the Municipal Grant awarded for the Town Plan revision.

Frank Vetere made a motion to approve the November 4, 2025 minutes. Anne Brown seconded the motion. All were in favor.

First on the agenda was the hearing for Jennifer Milano to operate a non-formula restaurant and Rural Small Enterprise, within the Village Zone at 32 Route 100. This hearing was continued from the November 4, 2025 meeting.

Bruce stated the board continued this hearing because they had a few questions.

Board members had questions regarding gray water disposal and hours of operation that were posted on public media.

Jen explained the 100 gallon gray water tank is pumped on a weekly schedule. She stated she also has an additional holding tank to be used if necessary. She also stated she is very aware of the amount of water used each day.

Regarding hours of operation, Jen explained that initially she planned stay open until midnight on Fridays during the winter months for the convenience of people coming up to ski, but finds it not necessary to be open that late. So far, 9 PM seems to be the most consistent time customers stop by. Jen stated that most people coming to Vermont from states to our south do not arrive until most food service businesses are closed. She stated that there have been no complaints from her neighbors' regarding her schedule.

Frank Vetere stated for a previous hearing for a business operating as a cannabis dispensary, the board limited the cannabis dispensary's hours to 7:00 PM, and that we should be consistent with all applications regarding hours of operation.

Jen responded that her hours of operation will fluctuate with the seasons, but asking her to end her day at 7:00 PM is not realistic. The board agreed that most businesses that provide prepared food are open much later in the evening.

Mike Scomillio asked about the required license to operate a food service. He stated he had stopped by and did not see her Food Service License displayed. He suggested she make a copy and include it with her application. Jen stated she began the process of meeting the state requirements to operate her

business last April. She stated that she has complied with all the state regulations required to operate her business and that her license is taped to her refrigerator.  
With no further questions, the hearing was closed at 6:08 PM.

Next on the agenda, Keith Geiger, of Two Rivers Ottawaquechee Regional Commission (TRORC) gave a power point presentation to the board, giving us an overview of the Planning Commissions powers and roles, and how to make decisions under the by laws of the Zoning Ordinance. He explained that since we are not a Development Review Board, we are a quasi-judicial body and therefore are covered under the Ethics Rules and must abide by the town's Code of Ethics policy.

The first part of his presentation listed detailed statements regarding our duties and responsibilities, as representatives of the town. He made the following points:

**1. We are a committee of the Select Board. As such, our duties are:**

To draft the town plan.

To draft Zoning and Sub-Division bylaws.

To do administrative review of zoning permits.

To act as arbiter of appeals only as the Zoning Board of Adjustment.

To nominate the Zoning Administrator.

Other duties can include involvement in the drafting of a capital budget and programs, and involvement in the local Hazard Mitigation Plan. We can also work on specialized studies to address situations of public concern.

The Planning Commission does administrative review, the Select Board reviews and adopts plans and by laws.

**2. The roles of Planning Commissions in Planning are:**

We are individually a representative of the town.

We must abide by the Municipal Code of Ethics.

We must be aware of and use Planning Principals. We can use TRORC as a resource for this.

Our role is to further state planning goals in our town plan and by laws. The #1 state planning goal is to have compact settlements surrounded by countryside.

We must also think about the future in our town plan. The essence of planning isn't the problems of today, but the problems of tomorrow that we see coming, such as, but not limited to, Short - Term Rentals.

**3. The roles of Planning Commission members in Reviews are:**

Each board member is an official of a Quasi-judicial body.

We can only do what is enabled. We must know what is enabled.

Our job is to hear testimony and find facts.

We must follow strict ethical standards.

Reviews are the main role where the Planning Commission is the decision maker.

Next Kevin gave detailed information regarding conducting a hearing and writing a Decision Letter:

**4. Why is making decisions Hard?**

We must be formal. We must avoid and appearance of favoring a person.

We must be precise in our decisions.

We must be decisive in our decisions.

We must be able to justify our decision.

**5. Why should we make decisions?**

It is our statutory duty.

Decisions must be fair and constitutional

Decisions must be an understandable written record.

Decisions must be legally defensible, based on our by-laws. If it's not in our by-laws, it is not legally defensible.

**6. Who makes Land Use decisions?**

The appropriate municipal panel, meaning the Planning Commission

The Administrative officer / Zoning Administrator

**7. When do we make a Decision?**

Once the application is complete.

When all information is gathered. Before a hearing is closed, the chair person should go thru each review standard and then ask each board member if they have any further questions.

If a piece of information is determined missing after a hearing is closed, the proper procedure is to re-warn the hearing and contact all participants.

**8. When a Decision is made, there are some deadlines to meet:**

Within the mandated time frame, which is 45 days. On the 46<sup>th</sup> day after a closed hearing and deliberation, if a Decision Letter has not been issued, the application is Deemed as Approved.

Legally, Deemed Approval is not the same as a Permit.

If we have Conditional Use hearings that did not receive a Decision Letter, we should file a notice in our land records that Deemed Approval Status exists for that permit.

Bruce Pauley then explained the process that was followed during the Falango and Keating hearings on October 7, 2025.

After the hearing was closed and during Deliberations, the board noted that both properties are located in the Flood Hazard Protection Overlay, and per Section 2.11 of the Zoning Ordinance, require a Letter of Determination from the Agency of Natural Resources. The board unanimously agreed to notify the applicant for both parcels, Josh Rourke, that both deliberations will be continued, pending submission of a Letter of Determination from the Agency of Natural Resources. The applicant was contacted and to date we have received a letter from Flood Plain Manager, Kyle Medas for the Falango property, confirming compliance with applicable standards, noting conditions to be added to the Decision Letter.

Since only the property owner and the applicant who represented the owner attended the hearing, the board will re-open the deliberation for the Falango property at tonight's meeting.

**8.1.** At this point in the discussion, Kevin stated the correct way to handle new information that is introduced after a hearing is closed, is to warn a new public hearing in the paper, and send the warning to all abutters, so the new information can be introduced as evidence.

Since no further information has been received for the Keating hearing, the board will schedule another hearing in order to add new information regarding her Flood Hazard Overlay status with ANR.

**9. Where can you make a Decision?**

In Deliberation. Always conduct deliberations in private.

**10. Where and when does the board decide to deliberate?**

The board can deliberate anywhere, including by email; as long as all board members are included.

Once the board comes to a decision, and votes, a draft of the Decision Letter should be emailed to all board members for review. Once all are in agreement, the Decision Letter should be dated, signed, and mailed to the property owner, applicant, all interested parties, and the Zoning Administrator, whose responsibility is to write the Permit and post it at the property, stating the date of appeal.

The decision is public. The deliberation and voting on the decision is not public.

### **11. What is the Decision about?**

The decision states what the applicant wants to do.

States if the applicant can do what they want to do.

States how they will have to do it.

### **The Conditional Use Standards are the forms for the Decision Letter.**

Forms can help create good applications and thorough reviews.

The Zoning Administrator review is advisable, pre-application. It is helpful that someone be available to advise applicants regarding information required, for an application to be deemed complete before it is referred to the Planning Commission.

### **12. Conditional Use Standards:**

Refer to specific parts of the by law

Determine what district is the use in?

What is the Use?

What Standards apply?

Every act of the Zoning Administrator is appealable.

### **13. The Hearing:**

Hear the applicant under oath, as it relates to our by-laws.

Hear any others who want to testify, as it relates to our by-laws.

Hear your own board members.

Advise anyone in attendance that to retain their appeal rights they must participate in some way in the meeting.

### **14. The Decision:**

Must be in writing.

Must be issued within 45 days of the close of the hearing and “shall include a statement of the factual basis on which the appropriate municipal panel has made its conclusions, and a statement of the conclusions.

Findings of facts are testimony and evidence turned into fact. **This is the critical part of a decision.**

It’s difficult to make a fact from the testimony of one individual, without another person who doesn’t agree. We need to test all the evidence to be sure uncontested testimony is indeed a fact. A site visit might be in order to confirm a statement of fact and arrive at a common picture. If the board decides a site visit is necessary, it should be warned and abutters should be notified. The board should not make a decision at a site visit.

Facts + Standards = Compliance.

Conclusions of Law (what the facts mean).

“Therefore \_\_\_\_\_”

Conclusion (recap and decision)

### **The Law on Decisions:**

24 V.S.A. §4464 (b)(1): The appropriate municipal panel may recess the proceedings on any application pending submission of additional information. The panel should close the evidence promptly after all parties have submitted the requested information. The panel shall adjourn the hearing and issue a decision within 45 days after the adjournment of the hearing. Failure of the panel to issue a decision within this period shall be deemed approval and shall be effective on the 46<sup>th</sup> day

Decisions shall be issued in writing and shall include a statement of the actual basis on which the appropriate municipal panel has made its conclusions and a statement of the conclusion.

The minutes of the meeting may suffice, provided the factual basis and conclusions relating to the review standards are provided in conformance with this subsection.

After his presentation, Kevin addressed specific issues:

- a. He cautioned that board members should never 'do business outside of businesses.
- b. He stated the Zoning Administrator issues Permits. The Planning Commission issues Approvals.
- c. Regarding Flood Hazard Overlay, the law requires a 30-day comment period from the State for applications within this overlay. Therefore, the Planning Commission should wait to warn the hearing at least 2 weeks after the ZA refers the application to the board, to give time for the state response to be received before the hearing.
- d. All decisions are appealable for 30 days, therefore, the Decision Letter should be made public on its completion and sent to the property owner, applicant, all interested parties, and the Zoning Administrator.
- e. The ZA's permit is appealable for 15 days, therefore the ZA should wait 2 weeks to issue a Permit after the date of the Decision Letter. His Permit should be dated to coincide with the appeal date of the Decision Letter.
- f. All interested parties have appeal rights.
- g. In a Decision Letter, if a Conditional Use Standard is deemed 'non-applicable', state why the standard is not applicable.
- h. It is important to note that the Purpose of Base Zoning and Overlay Districts (Section 2.2) in our Zoning Ordinance is **not** the Standards for Conditional Use deliberations on which the board must base their decisions.
- i. Be mindful regarding adding Conditions for Approval to a Decision. If it is not in our by-laws it cannot be listed as a Condition to a Decision, unless referenced by a state agency for a specific ruling.
- j. Regarding the Milano application, who was referred to the board for 2 reasons: Rural Small Enterprise and Non-Formula Restaurant, there is neither a definition or a standard for Non-Formula Restaurant and Non-Formula Retail. He stated we should write a definition, add it to our Definition section of the by law and be sure to include the change when we revise our Zoning Ordinance after the revision of the Town Plan.

Kevin's presentation will be the basis for our Zoning Process and Procedure Policy.

The board began deliberations for the Falango and Milano Conditional Use hearings at 7:38 PM. The Falango deliberation resumed from our October 7, 2025 meeting, after the board determined a Letter of Determination was required from the Agency of Natural Resources because their property is within the Flood Hazard Overlay. Josh Rourke, representing the Falango application with property owner, Christine Falango, was notified after the hearing that further documentation was needed before the board could make a decision. Josh contacted Kyle Medash, Flood Plain Manager, ANR regarding the Falango property.

On November 14, 2025 the board received a response from Kyle Medash referencing "compliance with the design standards outlined in the Plymouth Zoning Ordinance, effective June 11, 2024, particularly Section 3.6 Flood Hazard Overlay-General and Conditional Use Standards. The parcel/existing foundation at 169 Scott Terrace is located within the FEMA mapped Special Flood Hazard Area (SFHA)(Zone AE) associated with Echo Lake and has an approximate BFE of 1073' AMSL."

Compliance with the applicable sections of our Ordinance, Section 3.6.8 was confirmed, with specific language to be added as a Condition of Approval in a Decision Letter:

Section 3.6.8.13 shall be documented in the proposed Decision and **as-built condition with a FEMA Elevation Certificate.**

**A FEMA Elevation Certificate is required to be submitted to the Town, documenting as-built elevations. This must be added as a Condition of the permit.**

The paragraph on page 2 of the email from the Floodplain Manager regarding Section 3.6.8.16 states: **Such areas shall be used solely for parking of vehicles, building access, or storage and such a condition shall be stated in the permit.**

The board reviewed the email from the Flood Plain Manager, Kyle Medash and had no further questions. Anne Brown made a motion to approve the Falango Conditional Use application with the Conditions provided by Kyle Medash of ANR. Frank Vetere seconded the motion. All were in favor.

Next the board deliberated the Conditional Use application of Jennifer Milano, for a Non-Formula Restaurant and Rural Small Enterprise. Frank Vetere stated his concerns regarding her application were answered. Bruce read the Standards for a Rural Small Enterprise and stated that all standards were met. There are no standards or definition for a Non-Formula Restaurant in our Zoning Ordinance.

Anne Brown made a motion to approve the application by Jennifer Milano for Conditional Use approval for a Rural Small Enterprise and a Non-Formula Restaurant at 32 Route 100. Frank Vetere seconded the motion. All were in favor.

The meeting was adjourned at 8:08 PM. All were in favor.

Respectfully submitted, as draft

Elaine Pauley  
Secretary  
Plymouth Planning Commission