



**TOWN OF WINCHESTER
PLANNING AND ZONING COMMISSION**
Town of Winchester Town Hall, 338 Main Street
P. Francis Hicks Room – 2nd Floor
July 11, 2016 – 7:00PM
Regular Meeting Minutes

1. CALL TO ORDER:

Chairman Craig Sanden called the meeting to order at 7:00PM.

2. ROLL CALL:

At the request of Mr. Sanden, roll call was completed by Director of Planning and Community Development Steve Sadlowski. Present at the meeting in addition to Mr. Sanden were: Ms. Barbara Wilkes, Mr. George Closson, Mr. Jerry Martinez, Mr. Art Melycher, and Alternate Peter Marchand.

Also present was Board of Selectman Liaison Steve Sedlack.

3. AGENDA REVIEW:

No modification was made to the agenda.

4. APPROVAL OF MINUTES: June 27, 2016

The June 27, 2016 Minutes should be amended as follows:

Third page, tenth line, the portion of text that reads, "...is filled and all site work..." should instead read, "...is filed and all site work..."

MOTION: Mr. Melycher, Mr. Closson second, **to approve the June 27, 2016 Minutes as amended; unanimously approved.**

5. PUBLIC HEARING:

A. Amendment to Zoning Regulations 10.6.

MOTION: Mr. Closson, Ms. Wilkes second, **to open the Public Hearing regarding the Amendment to Zoning Regulation 10.6; unanimously approved.**

Mr. Sadlowski confirmed that all abutting towns were sent notice regarding this proposed Amendment to Zoning Regulation 10.6 via certified mail and the return receipts have been received. He also noted that the Northwest Hills Council of Governments has acknowledged receipt of this and have responded indicating that their staff found no apparent conflict with regional plans and policies or the known concerns of neighboring towns. Mr. Sadlowski then read the legal notice for the public hearing aloud, noting that it ran in the Republican American newspaper on June 29, 2016 and July 4, 2016.

Mr. Sanden reported that this amendment change was prompted as a result of a recent application and the revelation of the lack of control with the Zoning Regulations under this particular one, 10.6. It was noted that copies of a legal opinion from the Commission's counsel, Kevin Nelligan, dated May 4, 2016 were available to the public.

Mr. John Gauger of 64 Bank Street addressed the Commission. He noted that he would not speak to this proposed amendment directly. He did, however, request that as the Commission is considering revising the Zoning Regulations, that they keep in mind that in other towns in which he owns real estate, he has the ability to

put parcels in Open Space. Mr. Gauger reminded the Commission that it has been years since Winchester has addressed Open Space despite the fact that forestry and agriculture are addressed. Mr. Closson inquired whether Mr. Gauger has sample regulations that he is familiar with that he could refer. Mr. Gauger indicated that his property in East Haddam is in Open Space. It was noted that Colebrook and Barkhamsted both have a provision for Open Space.

Mr. Richard Traub of 417 West Wakefield Boulevard addressed the Commission with questions regarding what existing square footage of a home includes and whether it includes where the roofline falls. Mr. Sadlowski explained that what can be rebuilt is only exactly what was there in volume, in terms of the same footprint and the same height. Mr. Traub questioned whether it is calculated by just what falls within the walls. Mr. Sadlowski explained that a rebuild due to for example, a fire, would be based on what is on file in terms of the home, the porches, and decks, etc. Mr. Traub questioned what the maximum height restriction is. It was indicated that it was thirty (30') feet.

Mr. David LaPointe of 11 Hillside Avenue addressed the Commission in opposition of the proposed amendment. He questioned why the Commission is seeking to change Zoning Regulation 10.6, opining that if something is not broken, it should not be fixed. Mr. LaPointe noted that many applicants have found relief under this regulation. He posited that this regulation which has helped many residents of Town make their property values better and at the same time, increase tax revenue based on those home improvements. Mr. LaPointe noted that he has reviewed Attorney Nelligan's opinion but opined that Regulation 10.6 has been working fine. He explained that in speaking with members of the Taxpayer's Association, it is perceived that this regulation helps many people.

Mr. Brian O'Heron of 211 West Wakefield Boulevard addressed the Commission and noted that his focus is on the process. He recalled a time in history that regulations pertaining to docks, dock footings and cantilever docks were being reviewed and revised by the Inland Wetlands and Watercourses Commission. Mr. O'Heron opined that the biggest problem with the proposed amendment is that people do not know about it and therefore, do not realize how the revision is going to effect them.

Mr. Michael Hamm of 405 West Wakefield Boulevard addressed the Commission to explain why he was opposed to the elimination of this section of the Zoning Regulations. Mr. Hamm reported that he was one of the authors of 10.6, opined that it has worked well for over twenty years, and then detailed the history behind the drafting of 10.6. He described how the company, Union Pin, had come to town, and bought all the property in that area. He noted that the property at that time only had a rolling brook and a small pond. Mr. Hamm explained that the Union Pin company decided to construct a dam in that area in order to create water power to enable them to manufacture pins and needles. To pay for this, the company built a road around this newly formed lake and divided parcels up into 50' x 50' blocks and lots. Mr. Hamm explained that while some people bought several lots, many did not and that this was all prior to the adoption of Zoning Regulations in the 1950s. He explained that in 1993, when the Town sewered the lake, more people decided to make an investment in their properties and because of the sewers were now able to do so. Mr. Hamm pointed out that the majority of lots up on Highland Lake are non-conforming and that 10.6 was put together for this reason. Mr. Hamm questioned what will take the place of 10.6 and requested that the public hearing be continued.

MOTION: Mr. Martinez, Mr. Melycher second, **to not close the public hearing, based on the testimony received and reconvene on August 8, 2016 to allow discussion of what will replace 10.6;**

Prior to the vote on the preceding motion, Ms. Wilkes noted that what will take the place of 10.6 is the practice of applicants going before the Zoning Board of Appeals. Mr. Melycher opined that extending the public comment for another month would not hurt and that in the event that there are people who have not heard about this amendment, will provide a chance for them to be heard.

Mr. Sadlowski noted that the new regulations will address this issue. Mr. Hamm opined that 10.6 should not be removed until the new regulations are approved and adopted.

Mr. Sanden reminded the Commission that Attorney Nelligan had deemed 10.6 as legally indefensible.

Attorney Matthew Larock, who had not indicated his address, questioned how the new regulations will address the issues of 10.6. Mr. Sadlowski explained that there is a provision in the proposed new regulations that allow for the same issues that are addressed through 10.6. He explained that they would be handled by the Zoning Enforcement Officer who could issue a permit to conduct certain expansions within the constraints of the regulations. Mr. Sadlowski continued to explain how the proposed new regulations will be similar to 10.6, albeit a little more restrictive, but will not require applicants to even come before the Commission. In response to an inquiry as to when the new proposed regulations are likely to be adopted, Mr. Sadlowski reported that the Commission could be going to hearing in six to eight weeks.

Ms. Wilkes questioned Mr. Sadlowski as to whether applicants can go to the Zoning Board of Appeals if they want something outside of the regulations. Mr. Sadlowski explained that applicants can try but that the Zoning Board of Appeals is very limited. He noted that so long as a parcel has some type of cottage, the Zoning Board of Appeals does not have the authority to grant a variance to build something larger. Mr. Sadlowski explained that in the example of a request for a variance at Highland Lake, the applicant would have legal use of the property and there is no guarantee that a bigger home can be constructed, as the owner would have purchased the property knowing what was there. He explained that in order for the Zoning Board of Appeals to grant a variance, a hardship must be present that is unique to that property. Mr. Sadlowski noted that all the properties up in that district are substandard, with only about seventeen out of hundreds actually meeting the requirements, and that the courts have really tightened down on what the Zoning Board of Appeals can legally do as far as variances are concerned. Something unique to the land, such as wetlands or a cliff, that would make it very difficult to build are reasons for a variance, according to Mr. Sadlowski.

Mr. Sanden reminded the Commission that his take-away from the meeting with Attorney Nelligan was that currently 10.6 was much too liberal and did not allow the Commission to adequately regulate non-conforming parcels. A vote on the motion that Mr. Martinez had put forth was taken at this point. **Motion failed with Mr. Martinez and Mr. Melycher voting aye while Mr. Sanden, Ms. Wilkes, and Mr. Closson were opposed.**

MOTION: Ms. Wilkes, Mr. Melycher second, **to close the public hearing in this matter; unanimously approved.**

6. UNFINISHED BUSINESS:

A. Amendment to Zoning Regulation 10.6.

MOTION: Mr. Closson, Ms. Wilkes second, **that we find through testimony received at the hearing that Section 10.6 of the Zoning Regulations does not provided for the proper orderly development of the Town and the adequate protection of the environment as recommended in the Plan of Conservation and Development and thus we approve our petition to eliminate Section 10.6 of Zoning Regulations, specifically to eliminate the following language:**

10.6 A building containing a permitted use, but which does not conform to the requirements of these regulations regarding building height limits, floor area, area and width of lot, percentage of lot coverage, and required yards and parking facilities, may be enlarged or altered, provided:

- a) Such enlargement provides for a permitted use containing no more family dwelling units than now exist;***
- b) Any additions are constructed within the applicable yard requirements, or, with the approval of the Commission, are not nearer to the lot lines than the existing building.***

And to set an effective date of this change to July 22, 2016; Motion passed with Mr. Sanden, Ms. Wilkes, Mr. Closson and Mr. Melycher voting aye while Mr. Martinez was opposed.

Prior to the vote on the preceding motion, Mr. Closson explained that the Commission is attempting to address the issues previously addressed through 10.6 through the new Regulations, which may as a result allow an

opportunity for better development at the lake. Mr. Martinez questioned whether there are specific lines within the POCD (Plan of Conservation and Development) that address 10.6. Mr. Sadlowski explained that within the POCD, protecting the environment, protecting water quality and preventing uncontrolled growth are all mentioned in several places.

7. NEW BUSINESS:

No business discussed.

8. COMMUNICATIONS:

Mr. Sadlowski reminded the Commission that March 25, 2017 is the all-day Connecticut Bar Association Planning and Zoning, Inland Wetlands, and Zoning Board of Appeals training at Wesleyan University.

9. TOWN PLANNER'S REPORT:

Mr. Sadlowski reported that the Town's permitting software has been ordered which will allow all the permits to be online, providing for better tracking. He also reported that the new wide-format printer has been delivered and installed. Mr. Sadlowski explained that plans can now be scanned and saved digitally for the first time. A Community Connectivity Study which looks at sidewalks and roads for pedestrian and cyclist safety will be done at the end of the month, according to Mr. Sadlowski. He reported that the Inland Wetlands application on the Henny Penny gas station has been received. An update was also provided on a likely purchase of property on Main Street by the hospital, the Joyner Center, Mad River Lofts, and a blighted barn that was recently taken down.

10: OTHER BUSINESS:

A. Review Draft of Zoning Regulations.

Mr. Sadlowski noted that the printed draft the Commission was provided with in advance of this meeting had been marked up by Attorney Mark Branse. He reported that he also had emailed the one that Graydon Land Use Managing Director Sean Suder had edited.

Mr. Closson questioned whether there had been any progress with including limited commercial development in the Highland Lake District. Mr. Sadlowski noted that the first iteration is included on page 16 of Mr. Suder's draft. He noted that some of the included Permitted Uses should possibly get bumped down to Special Permit. Mr. Closson sought confirmation that this provision would allow for boat sales/repairs and marine fuel sales, explaining that the amount of activity and interest for this up on the lake and the value of the lake for recreation warrants this. Mr. Sadlowski made a note regarding this.

Mr. Sadlowski noted that a small motel/hotel is not included for Highland Lake but probably should. He also noted that after conferring with Attorney Branse, the flooring store can be included in the properties with this designation and would not be considered spot zoning. Ms. Wilkes indicated that the convalescent home should be included, too. Mr. Sadlowski explained that Mixed Use, allowing apartments above retail space, for this area only can also be considered as it would limit the area that this would be permissible. Ms. Wilkes noted that she was reluctant to do this.

Town Center and the number of tax exempt properties it contains was then briefly discussed. Mr. Closson questioned whether there are legal means by which an area of Main Street would be protected from and eliminate the potential for tax-exempt organizations to occupy space so that development is not pushed out towards the gateways. Mr. Sadlowski explained that while it cannot be looked at merely from a tax-exempt perspective, additional churches and/or establishments that allow different kinds of services can be disallowed. He noted that this Commission may only regulate uses.

Mr. Sadlowski noted that by establishing the minimum setback from the Lake's high water mark at thirty-five (35') feet, it will squash everything even in this limited commercial development and that this will need to be reviewed.

Mr. Sadlowski reported that Attorney Branse had questioned whether the Commission did indeed want to include duplexes as allowed in Town Single Family as reflected in the current draft. Consensus was to put duplexes and two-family uses under Special Permit.

Mr. Sadlowski reported that the Town Center Residential Zone cannot have minimum unit sizes included. It was also noted that Town Center Accessory Residential Uses should be included under Permitted Uses. Other items that the Commission may want to allow in the Town Center Zone by Special Exception were then discussed.

It was noted that Attorney Branse recommended including a maximum on the number of principal buildings per lot in Town Single Family and Rural Residential District. Mr. Sadlowski noted that Attorney Branse also had recommended sliding additional items of non-residential use in residential zones under Architectural Review such as Country Inns, Schools, and House of Worship. He explained that while Architectural Review is non-binding, it does help as developers do want to do the right thing.

Ms. Wilkes pointed out a typographical error on page 20, where there is an extra space in the word 'developments' at the top of the page.

Mr. Sadlowski reviewed the portion of text that addresses voluntary demolitions on page 27, explaining that what it essentially says is that if a building or a portion of a building is non-conforming, a property owner would need to apply for a Special Permit through the Zoning Board of Appeals. He noted that it would not be a Variance and does not have to include a hardship requirement. Approval would be granted based on a review confirming that no existing nonconforming is increased and that the applicant has shown that the proposal will, within the site constraints present, minimize the nonconformity or the impacts of the nonconformities to the greatest extent possible balanced with the need for reasonable and prudent development of the lot. This section also provides that low impact development (LID) techniques are utilized as allowed by the site to minimize the impacts, according to Mr. Sadlowski. He noted that if a property owner were to demolish their property without coming through first, the property would be unable to come through and would need to be treated like a new property.

Mr. Sadlowski also pointed out to Commissioners the Sign Table that Mr. Suder had included on page 49.

Mr. Sadlowski then reviewed with Commissioners the definition of Impervious Surfaces, found on page 127 and Highland Lake District, found on page 13. He noted that in the Highland Lake District, this draft allows for a limit of 15% for impervious surfaces and by a Special Permit, may increase another five percent, going up to 20% if LID is employed. Mr. Sadlowski explained that 15% or 20% is very low, especially for this district, as those properties are all nearer 30%, 40%, or 50% already. He noted that the inclusion of a second paragraph will function to handle this by exempting driveways, walkways, and/or patios, allowing an application including an engineered pervious design to have those surfaces exempt from the limits.

It was noted that the draft would receive additional edits and hopefully be in final draft form for the August 8, 2016 regular meeting.

A. Review Draft of Revised Subdivision Regulations.

Mr. Sadlowski referred Commissioners to a draft of a regulation to be considered for the Subdivision Regulations relating to cisterns. A chart indicating what is required depending on the location of the property and whether hydrants are available was reviewed. The number of cisterns that would be required depending on how many units could be included in a proposed subdivision was also considered.

11. ADJOURNMENT:

MOTION: Ms. Wilkes, Mr. Melycher second, **to adjourn at 9:11PM; unanimously approved.**

Respectfully submitted,

**Pamela A. Colombie
Recording Clerk**