

Zoning Commission

MINUTES Public Hearings – Regular Meeting March 27, 2017

7:30 p.m.

Upper Level Meeting Room

MEMBERS PRESENT: Mr. Solley, Mr. Reich, Mr. Werkhoven, Mr. Averill, Mr. Solomon

ALTERNATES PRESENT: Mr. Sivick, Mr. Burnham

STAFF PRESENT: Mrs. Hill, Ms. Pennell

ALSO PRESENT: Atty. Robert Fisher

REGULAR MEETING:

Mr. Solley called the meeting to order at 7:30 p.m. Seated were members Solley, Reich, Werkhoven, Averill, Solomon.

Consideration of the Minutes:

Mr. Solley noted that on page one, second paragraph with the sentence reading, “He stated that the proposed new exit driveway cut to the rear of the bank building onto Christian Street has been approved by First Selectman Mark Lyon.” The sentence should read, “He stated that the proposed new exist driveway cut to the rear of the bank building onto Christian Street has been approved by First Selectman Mark Lyon.”

MOTION: To accept the Regular Meeting Minutes dated February 27, 2017 as amended. By Mr. Solley, seconded by Mr. Averill, passed 5-0 vote.

OTHER BUSINESS:

Revision of the Zoning Regulations/Discussion of Possible Revisions: Section 17, Signs for Town Landmark Sites, Woodville Business District, Expansion of Depot Business District:

Mr. Solley suggested the Commission consider including the entire Town owned property at 10 Blackville Road in the Depot Business District. He explained that currently it is bisected by the residential and commercial district boundary line, which means it is governed by the residential district regulations including 10% lot coverage. Mrs. Hill circulated a map showing existing boundary line for members to review. Mr. Solley noted he has not yet discussed this with First Selectman Mark Lyon, but will do so. He asked the members to consider this and said it would be discussed in more detail at next month’s meeting.

Mr. Solley then opened discussion regarding the Revision of Section 17 of the Zoning Regulations and Atty. Mike Zizka’s email reply dated February 28, 2017 to questions that the Commission presented to him.

Specifically, Mr. Solley stated the primary issue addressed is with respect to when a nonconforming structure exists and the owner wishes to demolish and rebuild it. Although Washington has allowed this in the past, Atty. Zizka has advised that the current regulations do not permit it. Therefore, the Commission had asked him to draft a revision to allow the removal and reconstruction of nonconforming structures by Special Permit. Mr. Solley stated that it is Atty. Ziska's belief taking down an existing nonconforming structure should terminate the right to have it in a nonconforming location. Atty. Ziska noted that CT Statutes and court decisions suggest doing away with nonconformities and thought this should be the Commission's objective. Mr. Werkhoven asked Mr. Solley if the Commission was in fact allowed to go against the CT Statutes and Mr. Solley stated that this is allowed.

With regard to 17.2, Atty. Zizka agreed that it was a good idea for the Commission to add soil based zoning. Discussion took place regarding 17.4.B and if there was a difference in how to handle moving an intact shed to another location vs tearing the shed down and rebuilding and relocating it elsewhere. It was the consensus of the members that any nonconforming structure (house, shed, etc.), cannot be taken down and moved (unless it was an act of nature, and unless rebuilt to a conforming manner and location. The Commission's consensus was that any nonconforming structure, including nonresidential and residential structures, can't be moved unless it is to a conforming location.

At the Commission's request, Atty. Zizka gave a definition of "manifestly arranged" and stated it refers to what a neutral observer would have known at the time the use became nonconforming and recommended this language not be replaced by any other terminology. Commission members discussed this and suggested possibly deleting "manifestly". Atty. Zizka will be consulted on this prior to a decision being made.

The question of changing 17.8 to be consistent with the time limit in 17.9 with respect to any nonconforming structure that has been damaged by an act of nature be repaired, rebuilt, or replaced within one year of the issuance of a zoning permit, Atty. Zizka replied that this would be problematic because it does not set a time limit for obtaining the zoning permit. He felt it would be better to change the "one year" period (from the time of change) to two years. Atty. Zizka added that extensions to this time limit should only be considered if the regulations provide criteria for approving an extension, otherwise there would be no point in having a time limit.

When asked when a replacement would fall under Section 17.8 vs 17.9, Atty. Zizka explained that Section 17.8 only applies when a structure has been damaged by calamity/mother nature and would not require a special permit. He stated in Section 17.9 applies to a landowner choosing (but not obliged by damage) to demolish and rebuild a nonconforming structure. He explained if only a wing of a structure was destroyed by an act of nature, fire, or explosion and the landowner only wished to replace this wing, it would remain under Section 17.8. But if the landowner chose to replace more than just the damaged wing, this would fall under Section 17.9.

Replying to questions regarding if Section 17.8 should refer to “partial replacement” and Section 17.9 refer to “complete replacement”, Atty. Zizka stated that both sections can involve total replacement so this should not be changed.

In Section 17.9, the Commission had asked for different language for “under the circumstances described in this Section 17.9” as some felt it was too vague. Atty. Zizka did offer the alternative of “The Commission may grant a Special Permit for the full reconstruction of a nonconforming structure under the following procedures and standards set for below:” Some members felt the use of the word “full” was questionable and a decision was made to consult again with Atty. Zizka on this.

In response to the questions raised by the Commission regarding 17.9.A.1 and whether to insert the word “voluntarily”, Atty. Zizka explained this would be redundant, stating the words “remove” and “demolish” imply intention. Atty. Zizka did agree that photos of existing structures should also be submitted as part of the application requirement. In Section 17.9.A.2, it had been suggested the word “shall” be changed to “may”. Atty. Zizka stated strongly that the word “shall” should remain and the owner should be obliged to demonstrate the nonconformity is lawful. He further stated that the court cases have generally ruled that landowners should be required to prove their right to a nonconformity when questions arise as to its unlawfulness.

With regard to the question of 17.9.A.3, Commission noted that the proposed revision was to make the Regulations consistent with the way the Zoning Commission has been operating for years. Atty. Zizka stated the fact that a commission has been doing something the same way for a number of years does not mean that it is the best way to do it. He pointed out that it had already asked to make a special permit a requirement for the voluntary replacement of a nonconforming structure, and so this would be a new process.

In Section 17.9.B.5, several commissioners were concerned that this section would not adequately preserve the historic character of rebuilt or replaced nonconforming structures but other commissioners thought this type of provision would be more appropriate for an architectural advisory board. Atty. Zizka replied that it is unfortunate that state laws regarding zoning for aesthetic reasons are not clear, but a reasonable argument can be made that aesthetic considerations are appropriate only in the “village districts” or for actual historic properties or in historic districts. He felt that adding an aesthetic review requirement could be a problem.

Discussion continued regarding historical replacement. Atty. Zizka will be consulted about whether the Zoning Commission has the discretion to require historically accurate replacement as a condition of approval.

In 17.9.D, there was a question as to the reason for the Special Permit expiring in two years from date of issuance. Atty. Zizka replied this is due to potential changes in neighboring landowners and because allowing a new building to be constructed in a nonconforming location is unusual and would surprise neighbors. He felt having the landowners come back in two years

would allow new or additional neighbors a chance to weigh in at the special permit hearing. Commission members felt the expiration dates and extensions will stay the same.

Atty. Zizka defined the word “abandonment” at the request of the Commission. His preferred definition was, “The voluntary cessation of a use without intent to recommence that use, or the voluntary replacement of a use by a different use. Also, the voluntary replacement of a nonconforming aspect or condition of a structure or use with a conforming aspect or condition.” It was the consensus of the Commission members to use this definition.

Mr. Solley stated he would like to have some closure on these proposed regulation changes in April. He reminded members to consider the town garage property at 10 Blackville Road for inclusion into the Depot Business district as well.

ENFORCEMENT REPORT:

The Enforcement Report dated March 27, 2017 by Zoning Enforcement Officer Mike Ajello was distributed to Commission members.

With regard to two items in this report pertaining to outdoor lighting in residential districts and whether the Commission thinks these are in violation of the Regulations even though they are only “marginally offensive”, Mrs. Hill stated since 2007 there have been specific lighting regulations in place that detail what is and what is not allowed, including diagrams of the permitted types of fixtures. She said she doubted the lighting would be offensive if the permitted types of fixtures had been installed. She questioned whether the Commission wanted to enforce the Regulations only when a violation was found to be “offensive”. Commission members agreed that there was no need for them to inspect these properties, as specific regulations and safeguards pertaining to outdoor light fixtures are in place and that property owners must abide by them.

ADMINISTRATIVE BUSINESS:

Mr. Solley stated that he would like to have a special meeting with Atty. Zizka and/or Atty. Olsen to have them give their professional opinion on whether the current plans to construct an inn at 101 Wykeham Road comply with the Settlement Agreement. Members discussed what day and times would work for their schedules. This will be coordinated with Atty. Zizka’s and Atty. Olsen’s schedules and date/time to be set.

ADJOURNMENT:

MOTION: To adjourn the meeting at 9:15 p.m. By Mr. Solley, passed 5-0 vote.

Submitted subject to approval

By: _____
Donna Pennell, Land Use Clerk
March 31, 2017