

NEWINGTON TOWN PLAN AND ZONING COMMISSION

Special Meeting

March 11, 2015

Chairman Cathleen Hall called the special meeting of the Newington Town Plan and Zoning Commission to order at 6:00 p.m. in Conference Room L101 in the Newington Town Hall, 131 Cedar Street, Newington, CT

I. ROLL CALL AND SEATING OF ALTERNATES

Commissioners Present

Commissioner Frank Aieta

Commissioner Carol Anest

Commissioner Michael Camillo (6:05)

Chairman Cathleen Hall

Commissioner Kenneth Leggo

Commissioner Robert Serra Sr.

Commissioner Stanley Sobieski

Commissioner Anthony Claffey - A

Commissioners Absent

Commissioner Brian Andrzejewski - A

II. REVIEW OF ZONING REGULATIONS

A. Subsection 3.12 (Uses permitted in the B-TC Business Town Center Zone)

Craig Minor: The first change I would suggest appears in a couple of places in the zoning regulations under the heading of "Permitted". It says "Uses permitted, and by Special Exception in Section 3.11". Then in the next chapter it says, "Uses permitted in the B-TC zone". You might ask yourself, "does that mean that special exceptions in 3.11 are allowed here as of right?" What I am suggesting is that we just delete the last phrase. Then when we get to 3.12 where it talks about special exceptions, then we say, "as are allowed in 3.11". Just a housekeeping thing.

Commissioner Aieta: What is 3.11?

Craig Minor: I didn't bring my regulations.

Commissioner Aieta: I just keeps going.

Craig Minor: Right, the pyramid. Okay, "Except for the Following". The reason I deleted "sale, service, rental or repair of motor vehicles" is because those are not allowed by special permit in the TC zone. At the bottom of page 28, "however the Commission may waive this requirement" because we know that you can't do that. So that's it for the B-TC section.

Commissioner Sobieski: Excuse me Craig, you have to change the 3.12.5 section where it says Utilities...

Craig Minor: Thank you Stan, yes. Let me refresh my memory. "All electric and telephone utility installations shall be located underground, excepting required or necessary light standards." I couldn't think of anything that we would want to allow above ground... what else is there?

Commissioner Sobieski: Cable boxes, fiber optics, telephone, communications.....

Craig Minor: Okay. This comes up later, because the same phrase is used but we should make them consistent and add what you just said about cable. Thank you.

B. Subsection 3.12A (Town Center Village Overlay District.)

Craig Minor: Town Center Village Overlay District. I didn't make any changes to this because it is really complicated and obviously the Commission put a lot of thought into it, back in the day. Except for the waiver; 3.12.A.4 is another waiver item that you can't do. 3.12.A.5 is another item that you cannot do.

Commissioner Aieta: There's a lot of those.

Craig Minor: Yes, a lot of discretion, which is great; it's just not legal. D: seems like the same thing, "at the discretion of the Commission"; E: "may be modified by the Commission". Location, I hesitated on that one. It didn't seem to be too discretionary; the applicant has to show the Commission that the location of spaces improves street level retail use. That may not be the type of discretion that the courts said you do not have. That is using your judgment; but how is it different from any other waiver regulation? I will leave it stricken.

Commissioner Claffey: Question: under this section, are we trying to eliminate zero lot lines?

Craig Minor: No, I'm just trying to eliminate anything that the Commission has discretion on. I'm not making any judgment on whether it's a good rule, I'm just saying because the Court has said that you don't have the authority to waive rules, and that is what this says, "may be eliminated, the Commission may waive".

Commissioner Sobieski: Craig, I don't know if you want to delete Item F, because there may be some areas in town where you might want to grant them parking within the street right of way.

Craig Minor: The problem is, you don't have the authority to let them do that.

Commissioner Sobieski: I'm specifically thinking about the center of town with some of the parking there that is currently in the state right of way.

Craig Minor: You've given a good reason why the Commission should be able to use its discretion. The thing is, you can't. We could write a different regulation that would result in the same thing, but the way this is written the court would say, you don't have the authority to achieve your goals that way. You have to come up with a different way to achieve that goal.

Commissioner Claffey: That comes back to my question. The first paragraph under five, the last sentence, "Standards: will be eligible to use the following incentives to facilitate their improvements subject to the approval of the Commission". The Commission still has the authority to approve or deny said request from applicants.

Commissioner Aieta: You've taken out all of the incentives.

Commissioner Claffey: That's what I'm trying to understand. If someone came in with a plan, you really have nothing other than B; you are eliminating everything. I have a zero lot line plan, I'm just using this as an example, under special provisions, I can get approval from the building department, but I can't get approval from you guys, because you removed the regulation.

Craig Minor: Right, so what we should do to preserve the intent of this regulation, is amend the bulk regulation to allow zero lot line development.

Commissioner Claffey: I'm just using that as an example, because there might be A, C, D, E, F, too because some of those play together.

Craig Minor: It sounds like you are making Stan's point that there is a good reason for this regulation. The problem is, it's unconstitutional.

Commissioner Claffey: But there is still a hiccup on your main paragraph. That's what I don't understand.

Commissioner Aieta: No, because we don't want to arbitrarily decrease to fifteen feet, so just say fifteen feet.

Commissioner Camillo: You just have to leave it a set thing, and that's what it is.

Commissioner Claffey: But I'm saying, in order to do B, you may have to have D, I'm thinking of the overlay district not any other approvals.

Commissioner Anest: We just need to re-word that opening paragraph.

Craig Minor: Maybe we should delete the whole Special Provisions section, because all the special provisions are things that you don't have the ability to grant, with the exception of B, and I think B is elsewhere in the regulations. The businesses that gave up their property for the municipal parking lot back in the day, this is B, I'm pretty sure are addressed elsewhere in the regulations. We should probably delete this whole Special Provisions section, as painful as it is, because it's a great tool, but you don't have the legal authority.

Commissioner Claffey: I'm still trying to wrap my head around the legal authority. Just don't say you can't. Explain it to the people who are listening.

Craig Minor: Okay. The rules are the rules, and this Commission does not have the legal ability to waive its own rules. That's in the Connecticut general statutes. Only a Zoning Board of Appeals has the authority to waive zoning regulations, but over the years a lot of town Planning and Zoning Commissions have fudged that by calling it a "waiver", or a "modification" but the judge in the MacKenzie vs. Monroe P&Z case said all those words are the same thing as a variance, and only the ZBA can grant a variance.

Commissioner Aieta: Then that whole section should be taken out.

Craig Minor: Right, and I'll make sure that B is elsewhere in the zoning regs. Under 3.12.A.7 I scratched out "certified by the commission", because we don't have a process to certify anything, and there is already a state law and certainly in your zoning regulations that a special permit has to be filed with the Town Clerk to take effect, so "certified by the Commission" isn't needed. I put in the word "Newington" because someone took a generic regulation and cut-and-pasted it for Newington, so let's specify that.

C. Subsection 3.13 (Special Exceptions Permitted in the B-TC Business Town Center Zone)

Craig Minor: I don't know why this doesn't follow right after permitted uses in the B-TC Zone, the overlay is between the two of them, but it's always been there, so I'm not going to move it. As I said before, I'm specifying that the same special permit uses in the B zone are allowed by special permit in the B-TC Zone.

In 3.13.1 I'm inserting the phrase "unrestricted multi-family" residential buildings to distinguish from single family housing because I think it is confusing; we might be talking about single family

and obviously we're not, we're talking about higher density, condominiums, so I added "multi-family".

In 3.13.6 I took out the phrase "reserves the right to waive all or part of these requirements". Now I'll stop and let you catch up.

D. Subsection 3.14 (Uses Permitted in the B-BT Berlin Turnpike Zone)

Craig Minor: Now we'll move onto the B-BT Berlin Turnpike Zone. I took out the reference to special exceptions because it is confusing, and inserted it later on. Earlier I mentioned it would be inserted later on, and we should use the same wording, whatever it is.

Craig Minor: That's it. You made better time than I thought. I thought there would be discussion over what was allowed in these zones.

Chairman Hall: On page 34, 3.13.5, "may authorize a reduction in the minimum site area to every unit of affordable housing". There's that word "may" again.

Craig Minor: You want to make it possible for affordable housing units to be smaller than conventional units to encourage the market to produce affordable housing, so I suggest that I reword this so that it doesn't seem arbitrary on the Commission's part, so if a developer is proposing an affordable housing development with all of the caveats, the lots can be as small as 750 feet. I'd like to re-word that. Remove the "may", change it to "shall", or something.

Chairman Hall: Anyone else have anything?

Commissioner Claffey: Section 3.14.1 Permitted Uses: this talks about the height of 4 stories or 45'. We might want to add some language, because some architects could get five stories within 45 feet. Hotels and motels only to the height of four stories - I think there are some guys out there who could design a hotel or a motel especially with only seven foot ceilings, and you could get five stories. Try to keep it. At the last meeting, the gentleman who made the presentation said there were eight motels.

Craig Minor: How about we word it, "four stories and no more than 45 feet high".

Commissioner Claffey: The new Holiday Inn Express, it's only four stories, but it looks so big when you drive by. I'm trying to protect the integrity of the Pike.

III. ADJOURN

Commissioner Sobieski moved to adjourn the meeting. The motion was seconded by Commissioner Serra. The meeting was adjourned at 6:28 p.m.

Respectfully submitted,



Norine Addis
Recording Secretary