

NEWINGTON TOWN PLAN AND ZONING COMMISSION

Special Meeting

May 13, 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  
Chairman Cathleen Hall  
Commissioner Kenneth Leggo  
Commissioner Robert Serra Sr. (6:10 pm)  
Commissioner Stanley Sobieski  
Commissioner Brian Andrzejewski-A  
Commissioner Anthony Claffey-A

Commissioners Absent

Staff Present

Craig Minor, Town Planner

II. REVIEW OF ZONING REGULATIONS

A. Section 4: Height, Area and Yard Requirements

Craig Minor: The first section is 4.1, "Scope of Requirements" and I'm not suggesting any changes to that.

Section 4.2 refers to Table A and B which appears later in the regulations...I never noticed this before. I'm not sure why it's here in 4.2 and again several pages later as tables. I just noticed that now. There may be a reason for that, but if not, I would suggest a change at the public hearing for this.

The first change that I suggest is not a dramatic one, in 4.3.2. It currently reads "Construction in Yards", but goes on to describe storage and display in the yards. Instead, let's call this section what it is, it's "Storage and Display in Yards". Next, I'm suggesting we replace the word "permitted" with "approved". It's kind of "happy-to-glad" type of change, but I think "permitted" implies that they went through a permit process, with an actual permit, as opposed to approved by the Commission.

Commissioner Claffey: Is that a typo with the word "excepting" in subsection A? Should we use "except" or is there another word we are supposed to be using?

Craig Minor: I think the "excepting" means, "except for," and maybe "except for" would be a little clearer.

Chairman Hall: That means "excluding".

Commissioner Claffey: Then should that be "excluding"?

Craig Minor: No, because then it's a double negative. "Storage is not allowed, except landscaping, walks, enclosed screened dumpsters drives and parking areas as required, and permitted by the Commission".

Commissioner Claffey: When you finish that whole sentence, we start off with what you can do, and what you can't do, and then back to what is required.

Craig Minor: No, we start with what you can't do.

Commissioner Claffey: Meaning yards, in those zones, "shall not be used for storage, display or any other use except landscaping, walks, enclosed screened dumpsters drives and parking areas as required", so, it goes on and on. I know it's just one word, but it has a big meaning. It is what you can and can't do in the yard that say, your landscape company owns, or in a yard at a business.

Chairman Hall: In any other use, period. "Landscaping, walks, enclosed screened dumpsters, drives and parking areas that are that are required and approved by the Commission are allowed". How about that? So you make it into two sentences: "Shall not be used for storage, display or any other use." Then we start, "landscaping, walks, enclosed screened dumpsters, drives and parking areas that are required and approved by the Commission are allowed". How is that?

Commissioner Claffey: I have another question on 4.3.2.A. I'm assuming that there is a screen requirement for a dumpster?

Chairman Hall: Yes.

Commissioner Claffey: Good. "Loading bays and docks"; could that be a subsection? Why are we including a loading bay in the "Yards" requirement? They are separate entities.

Commissioner Serra: There are yards in businesses, so they could have both, again, a yard in a business.

Commissioner Claffey: But why are we including multiple things in the "Yards" regulation? You have specific requirements for dumpsters and how you screen them, and loading docks which you can't have on the public side of the street without a special exception, yada, yada; why are we including it with the "yard" section? The yard is separate from the dumpster and/or the way a truck backs up to a building.

Craig Minor: Right. Let's take this B and make it C. He is right, it's a really different thought.

Commissioner Leggo: The end section, are you going to make that B?

Craig Minor: Yes, the last sentence. Shall we go on? The next item I have is in 4.4.3 C, so if nobody has anything before that?

Craig Minor: Section 4.4.3 is "Height Modifications", and C begins with: "In Business, Industrial, and Development Zones"; does anybody know what we meant by "Development" zones?

Chairman Hall: Could that be "Planned Development"?

Craig Minor: "Planned Development, or Commercial Development". Good, thank you.

Commissioner Claffey: Talking about 4.4.3.C: "such as chimneys, stacks or elevators when approved by the Commission." Do we have buildings come before us to say, hey, we need a taller stack, for whatever reason? Like a Saputo Foods, or someone who has an elevator?

Craig Minor: Sometimes a new building has a smoke stack or mechanicals on top that go above the height allowance, so most towns have a regulation like this that allows you to allow that.

Commissioner Claffey: What catches me is the last part, "when approved by the Commission". Is there a standard? A lot of buildings have a parapet wall which they now call mechanical fencing, where they enclose the mechanicals on the top of the building with the same façade as the building, so it looks like the side of the building, but everything behind it is mechanicals.

Commissioner Anest: A façade, a false façade?

Commissioner Claffey: But some of them have become structures where you physically open a door, but when it says we approve it, what are we approving? Just the height?

Commissioner Aieta: When it's beyond the height requirement. We approve it to go beyond the height requirement. So if the height requirement is 35 feet and they need an extra five feet, we can approve that.

Craig Minor: I think maybe it makes a distinction between something that staff could approve versus the Commission. I mean, you wouldn't deny if it met the requirements, but the regulations give the Commission the responsibility to approve it, and not the staff.

Craig Minor: Anything else before we get to the building in a wetland issue? This came up about a year or so ago, and I'm going back to it. There is no reason for TPZ to have jurisdiction over a wetlands issue when there is a perfectly good Conservation Commission whose job is to make decisions on what gets built in the wetlands. It's redundant. When this first came up a year or so ago, I did some research to see what the thinking of the Commission was back on April, 30, 1999. I read the minutes, and I don't remember exactly, but I do remember not seeing anything clear explaining why TPZ felt it was necessary to have that. I was expecting to see that this regulation was a holdover from back before there was an Inland Wetlands Commission, but it isn't.

Commissioner Aieta: It's just reinforcing what they are doing, but it also has in here the setback can be modified upon the receipt of a favorable report from the Conservation Commission. I don't see what we would take it out.

Craig Minor: It becomes a problem because the Conservation Commission staff has the authority to approve some permits and in effect waive the setback, but this zoning regulation says that the Conservation Commission has to give the waiver.

Commissioner Aieta: Give us a hypothetical situation.

Craig Minor: All right. Somebody wants to build a garage in the upland review area and applies for a wetlands permit. The Town Engineer has the authority to approve that application, because he is the Conservation Commission "designated agent". But, with this regulation, the ZEO cannot approve it because the zoning regulations says that no building can be built within 50' of a wetlands without a "favorable report from the Conservation Commission". The Conservation Commission has already in effect given their Designate Agent the power to make this call, but the zoning regs still says that only the Conservation Commission and grant it. It all comes down to you don't want to be doing some other

commission's business because it can get really complicated. Just let them do their thing, you do yours. Don't try to parallel, because you are going to get out of sync with them, as is the case here.

Commissioner Serra: I kind of agree with Commissioner Aieta, in having that in there.

Craig Minor: I think at least one project was delayed by a month or more due to this regulation, but I don't remember the details. All right, I'll come back to this at another time when I have a good example of how it can be problematic.

Commissioner Aieta: But don't take it out.

Craig Minor: Right.

Chairman Hall: If you don't take it out, "maybe" should be two words. "The setback standard may be modified".

Craig Minor: Right. Okay, "Cedar Mountain Ridge Line Development". I did a little clarifying here. "Ridgeline Setback Area" is a phrase in the definition section, and since that is what this paragraph talks about, let's refer to the correct item.

Commissioner Aieta: The part of the ridge by the water tower, and down by the highway.

Chairman Hall: Some of it is in Rocky Hill. You have Lamplighter that goes in a big circle, and then it goes into Rocky Hill. You have trails.

Commissioner Sobieski: Mr. Minor, I believe this was put in to protect the small section of the ridgeline up on Cedar Mountain. That's why it was put in there.

Craig Minor: I know. What I'm saying is that it is worded badly.

Commissioner Sobieski: I wouldn't want to see the words "Cedar Mountain" taken out of there.

Craig Minor: I'm not. The problem is, the phrase "Cedar Mountain ridgeline setback area" is not defined anywhere. There is a "Cedar Mountain Traprock Ridgeline" in the definitions section, and there is a "Ridgeline Setback Area, but there is no "Cedar Mountain ridge Line setback area". That's why I'm saying, change it to what it should have been all along.

Commissioner Sobieski: Let the words "Cedar Mountain" stay in there. That's really the only mountain we have.

Craig Minor: It's just housekeeping, but it clarifies what it is we're telling the person who is reading the regulations to do.

Commissioner Andrzejewski: Craig, is it just those two definitions?

Craig Minor: I think the ridge line setback area encompasses the Cedar Mountain trap rock ridge line, so we probably don't need both, but I'll double check.

Commissioner Sobieski: I seem to remember something like 500 feet on either side of it.

Craig Minor: It's 150 feet on one side, and it follows the contour of the other. This is actually one of the first things I did when I got to Newington, try to make sense of this section of the zoning regs. Then objective was obvious, but exactly how a homeowner or developer

complies with that objective is not. I asked Town Engineer and the GIS specialist, and we spent weeks and weeks working on this because it's very complicated. "The area bounded by (A) a line that parallels the ridge line at a distance of 150 feet on the more wooded area of the ridge...", okay, that's not too hard - find the ridgeline and then measure 150 feet from it. But then it goes on to say "...and (B) the contour line where a ridge of less than fifty percent is maintained for 50 feet or more on the rockier side of the slope." And it goes on from there. We were going nuts trying to determine, on a map, where these boundaries would be, and I don't think we ever did. It's never been a problem because no one has come in looking for a building permit, but I think eventually someone will.

Commissioner Sobieski: I have a suggestion that you talk to the old Town Engineer, Peter Arbur, he may have some ideas.

Craig Minor: The next thing I have is on "Table A: Schedule of Height, Area and Yard Requirements". The footnote for Table A begins with, "Accessory Building in Residential Zone: (A) shall not exceed 15' maximum height". I thought this was pretty clear, but a citizen called the ZEO the other day, who wants to build a shed, and it wasn't clear why the word "maximum" is in this phrase. It seems to imply something beyond what the obvious intent of this rule is, that sheds cannot be more than 15' high. So if the phrase read, "shall not exceed 15' in height", that would tell everybody what they need to know. Carry that same thought through to C, "shall be at least five feet from any lot line". Currently it reads, "shall be at least five feet minimum distance from lot line" which doesn't make a lot of sense, so I'm suggesting that we change it to, "at least five feet minimum distance from any lot line." It is the same for Table B, which is the equivalent table for Commercial buildings. Then we have the illustration of what the set-backs are. That is it for this section.

Commissioner Claffey: Could you go back to page 5? Do we need to define Table A, and is there a reason why you took out Section 4.5?

Craig Minor: I moved it to the beginning of the section.

#### **B. Section 5.1: Non-Conforming Lots, Land Use and Buildings or Structures.**

Craig Minor: I did not have any suggestions for this section.

Commissioner Claffey: Going back to Page 7, Figure 1: is there a similar drawing for a typical corner lot, to define the front of buildings?

Craig Minor: It probably would be helpful.

Commissioner Leggo: I hate to go back further back, but in 4.2: Schedule of Height, etc., what about Table B?

Craig Minor: Yes, you are right, it should say A and B. And getting back to Commissioner Claffey's question - some towns' regs have a lot of diagrams, but we don't, just a few like this one showing a typical lot. It wouldn't be a bad idea to show a corner lot too, so a person who has a corner lot could quickly see what the regulations are. The regulations say that for a corner lot you have to have the full setback from both streets. It would be nice to have an illustration for that also. We don't allow rear lots, so there would not be a need for a rear lot sketch. We do have some "through lots", that's when a lot goes all the way through from one street to another, and when you have a through lot it can be contested where the "front" is, so a sketch would show the need for the full setback on both ends. Does anybody have any comments on the non-conforming section?

Commissioner Sobieski: Are there any lots in Newington where there is a house built in back of each other?

Craig Minor: You mean "rear lots"? Sure, there are a lot of them, and they are all non-conforming. We don't allow them any more. There was a time when we did.

Commissioner Aieta: Why did we take that out? Do you remember?

Chairman Hall: There was a controversy on one, and unfortunately to make the controversy not happen again, they decided to take it out of the regulations.

Commissioner Aieta: What was the controversy, do you remember?

Chairman Hall: On Church Street. There was a white house, and they wanted to do something in the back, and the people on Patriot Lane came in droves to oppose.

Commissioner Aieta: Did he ever build it?

Chairman Hall: Never did.

Commissioner Aieta: They never built it?

Chairman Hall: It's the same as it was before, but he had permission.

Commissioner Aieta: When did they do that, when they did that wholesale revision?

Chairman Hall: I'm not sure when. I think it was something that they did shortly after that happened.

Commissioner Aieta: It seems unfair that people used to be able to have a house behind them if they had a deep lot, and then all of a sudden if people didn't do it by a certain time were penalized. Just because you had one area where people complained about it, you throw it out of the regulations? That seems a little harsh. In some areas, Maple Hill Avenue, there are still a lot of areas where people have over-sized lots, where they have the frontage, they could put a driveway through. I see some that are very attractive because they are off the road, back in the woods. There's one on Church Street.

Chairman Hall: There's more than a few, there's one on Grandview, no, not Grandview...

Commissioner Aieta: You would have to have a certain sized lot, a super deep lot, and you would have to have some width to be able to put a right-of-way through. It's not for everybody and their brother, but there are still plenty, and they shouldn't be penalized if they want to do that because of one instance. Wholesale taking things out of the regulations like that. It's easy for a Commission to, when there is a problem, to throw it out the window.

Commissioner Sobieski: I can't remember where it is in town, but I saw one house in back of the other, on one lot.

Chairman Hall: There are quite a few of them in town. Church Street?

Commissioner Sobieski: No, it was up in the north end of Town.

Chairman Hall: Jefferson Court. That was in the courts for a while, but I think they resolved that.

Commissioner Serra: Isn't there one that was just built, or still in the process, on Richard Street, on the lower part, in the back?

Chairman Hall: They just built one, but I don't think that is in the rear.

Commissioner Serra: It does sit in the back.

Chairman Hall: No, I think that was a lot that they built on. It was just completed lately?

Commissioner Serra: Yes.

Chairman Hall: On Church Street? That was a lot that they built on.

Commissioner Aieta: What section of the regulations would that come under?

Craig Minor: Rear lots?

Commissioner Aieta: Yes.

Craig Minor: I don't know what section it was.

Commissioner Serra: I know in 1984 we built on a rear lot, on New Britain Avenue, that backs up to Churchill Park.

Commissioner Aieta: That's a great lot. Would you find out what Section that was for the next meeting?

Commissioner Claffey: I have a question for our Planner. Section 5.1: with all the changes we are going to be making, does anything that we are talking about doing make any current lots non-conforming?

Craig Minor: It's possible, but we won't do it without realizing that we are creating some non-conformities.

Commissioner Claffey: If we make changes, we'll come to a point, as Commissioner Aieta said, where it was allowed before and we are making a change for the better, if we keep taking things out and we do this every other Wednesday, we should be cognizant that we might make it difficult for a current owner, making a hardship.

Commissioner Aieta: That's a very interesting point. When we changed the auto regulations, we took them out, and then we put them back in, and a lot of businesses are still non-conforming. A lot of businesses are complaining that they are non-conforming, they have problems with the banks, and they say it's because they are non-conforming.

Craig Minor: It's the same with the rear lots, but if they got the variance and if that's how it was done in Newington, then I...

Chairman Hall: All I know is that when we built our house, we didn't have to come before the Planning Commission. We bought the lot and put up the house, but that was in '83.

Commissioner Aieta: You had to show that you had a right-of-way, and access to the back.

Craig Minor: How did that lot get created in the first place?

Chairman Hall: It was sort of a leftover lot from a subdivision. It had a granted easement to the rear.

Craig Minor: With no frontage? And the Town Planner let you get a building permit?

Chairman Hall: That was 1983.

Commissioner Sobieski: It's my understanding that if something was conforming, and it became non-conforming, they are grandfathered, is that right?

Craig Minor: Yes, it's a state law.

Commissioner Sobieski: Then why is there such an issue with people who are non-conforming getting loans? I don't understand that.

Chairman Hall: It depends on the bank.

Commissioner Sobieski: Okay, so it's more of a bank issue.

Chairman Hall: Just remember, they have to sell these loans on the secondary market, and if they consider that is not a clear title, they are going to have a hard time selling it on the secondary market. But there are banks that hold their own loans.

Commissioner Sobieski: As long as it conforms to the Town's rules, why is there such an issue, that's what I'm saying.

Craig Minor: I'll give you an example. The other day Mike D'Amato got a phone call from a property owner who wanted to refinance their property and the bank wanted a Certificate of Compliance but Mike wasn't able to give them one because it was a legal non-conforming lot. He wasn't able to give the owner a "Certificate of Compliance" because the lot is not in compliance. Mike offered to give the person a letter stating that the property is not in violation of any of the rules, which is true, but the owner said no, my bank only wants a Certificate of Compliance. It becomes a problem because frankly some of these banks don't understand zoning law.

Chairman Hall: Especially if they are going to try to sell the loan. If it's a bank in California and they don't understand our type of zoning, they want it completely clean, and when they see "non-conforming", they don't want to know about it.

Commissioner Sobieski: I guess what I'm asking is if there is some way we could get some relief for these people. Maybe something could be done at the State level.

Chairman Hall: No, these are national banks, that's the problem.

Commissioner Sobieski: I understand that, but I'm saying because of the age, maybe back in 1928 this was a conforming lot, and now in 2015 it may not be, I'm just saying

Commissioner Anest: The whole north end of town is non-conforming, and you can still get a loan.

Chairman Hall: It depends on the bank.

Commissioner Anest: Most of the banks do lend on non-conforming lots. There would have to be extenuating circumstances for them not to.

Commissioner Aieta: Well, here is one.

Chairman Hall: He would have to go to another bank.

Commissioner Anest: Or he would have to get a letter from the Town Planner.

Craig Minor: Yes, but it also depends on the person working at the bank. If you have an inexperienced person it can be a nightmare, but if you have an experienced person, there's no problem. It's the luck of the draw.

Chairman Hall: And if they keep their own loans. If they keep their own loans they are much more lenient. If they have to sell them, that's where you run into a problem.

Craig Minor: Do you want to stop now before going on to 5.2?

Chairman Hall: Yes.

III. ADJOURN

Commissioner Sobieski moved to adjourn the meeting. The motion was seconded by Commissioner Leggo. The meeting was adjourned at 7:52 PM.

Respectfully submitted,

A handwritten signature in blue ink that reads "Norine Addis". The signature is written in a cursive, flowing style.

Norine Addis  
Recording Secretary