

**TOWN OF CHESTER
PLANNING COMMISSION**

December 3, 2018 Minutes

Commission Members Present: Naomi Johnson, Claudio Veliz, Barre Pinske, and Tim Roper.

Staff Present: Michael Normyle, Zoning Administrator, Cathy Hasbrouck, Recording Secretary.

Citizens Present: Brandy Saxton.

Call to Order

The meeting was called to order at 6:00 PM by Chair Naomi Johnson.

Agenda Item 1 Review minutes from November 10 and 19, 2018.

Claudio Veliz moved to accept the November 10th and 19th, 2018 minutes. Tim Roper seconded the motion.

In the November 10th minutes 5 typographical errors were noted, 5 statements that, once discussed, did not result in changes and 5 statements which were clarified as follows:

On page 1 in the second paragraph under agenda item 1 the phrase “on steep or complex sites” was added to the first sentence. Claudio Veliz had been asking a question about how building height would be measured when the meeting was interrupted and moved to the Town Clerk’s office to accommodate a class scheduled for the auditorium. The minutes did not capture his entire question.

On page 2, the first sentence of the second paragraph ended with the word “that”. It was agreed that the words “the certificate of occupancy” made the sentence clearer. When discussing this change, Claudio Veliz noted there was no definition of certificate of occupancy or certificate of compliance in the definitions. Naomi Johnson said that shortfall could be addressed later. Cathy Hasbrouck pointed out that Chester doesn’t issue a certificate of occupancy. Michael Normyle said the town no longer had an individual qualified to issue a certificate of occupancy and it only issues certificates of compliance.

On page 5, the word “This” in the first complete sentence was clarified to be “Replacing the Preliminary Plat Review with a sketch plan review for minor sub-division review”.

In the last paragraph on page 5 the fourth sentence was changed to “Brandy Saxton said that when writing the waivers section, she chose a flat 25% for the adjustment allowed on all dimensional standards”

On page 6 in the fourth paragraph the word “that” was added to the fifth sentence: “Claudio asked if the precedent of a variance had more weight than *that* of a waiver.”

There was one change requested for the November 19th minutes. Naomi Johnson asked to have a statement added to Agenda Item 3 in regards to Chapter 10. She wanted the minutes to state that

she had said at the meeting she believed Chapter 10 had been reviewed at the October 15th meeting and that she would check into when it was discussed. Naomi Johnson had since checked on the date. She found that Chapter 10 had been discussed at the September 17th meeting. She said Claudio had been present at the meeting, potential changes had been discussed and no changes for Chapter 10 were presented at any subsequent meeting.

A vote was taken and the minutes were accepted as corrected.

Agenda Item 2 Citizen Comments

Michael Normyle distributed W-4 forms to the Commission members, who will be receiving a small stipend for their work on the Commission. Questions about the forms were referred to the town bookkeeper, Cil Mathews.

Agenda Item 3 Continue to review proposed changes to the Unified Development By-Laws

Naomi Johnson said the Commission ended the bylaw discussion on November 10, 2018 with Sub-section 3005, Camping and Camping Units and will begin this session with Sub-section 3006, Construction-related Structures and Uses. Brandy Saxton said that Sub-section 3006 had no comparable provisions in the existing bylaws. She said the process outlined in the proposed bylaws was probably not different from what currently happens in a construction project, i.e., the construction activity is approved as part of the permit for development. No changes were requested to this Sub-section.

Sub-section 3007, Demolition, addressed a topic which had been discussed in a prior meeting, the demolition of a historic structure. Brandy Saxton said she had been asked at that prior meeting to find a list of historic structures in Chester. She said she put the information in an e-mail and sent it to Naomi Johnson. Naomi Johnson said she had printed the e-mail but did not bring it to the meeting. She said she would forward the e-mail to Cathy Hasbrouck who would distribute it in the packet for the next meeting.

Brandy Saxton said Chester had a designated historic district and most of the listed historic structures are located in that district. The historic district is contained within the Village zoning districts, which is referred to in Sub-section 3007, but there were also a number of listed historic structures outside the Village zoning districts. Cheryl Joy Lipton asked to review the reasons for which a conditional use permit would be required in order to demolish a building. Brandy Saxton said the current proposed language would require a conditional use permit to demolish a listed historic structure in the Village zoning districts. This would not address listed historic structures outside the Village zoning districts. Naomi Johnson said this portion of the discussion had previously ended with a decision to review the list of historic buildings in Chester in order to know which structures would be protected by the proposed language. The list was not available at this meeting. The Commission then reviewed the list of reasons for which a permit to demolish would be granted. Tim Roper felt criteria (2), the inability to sell the building at current market rates over a period of six months, was too lax given the sluggish real estate market in Chester. The Commission discussed this and considered lengthening the time the building needed to be marketed before it could be demolished. Brandy Saxton acknowledged

that the criteria were not black and white and that it is challenging to craft a bylaw that is fair to all. The Commission decided to eliminate criteria (2), the marketing failure, as a possible reason for demolishing a historic building. Two of the remaining reasons were discussed. Brandy Saxton said the first reason, an unsafe and blighted structure, duplicated the power Chester already had to rid itself of an unsafe structure. This reason will not increase the likelihood that a historic structure will be demolished. When asked for an example of the third reason listed, an obsolete or unsuitable structure, she cited an abandoned mine shaft. The issue of which properties must obtain a demolition permit was tabled for discussion later.

Sub-section 3008, Driveways, was discussed next. Brandy Saxton said this sub-section represented three significant changes to the existing bylaws on driveways (Article 5.G). The proposed bylaws will apply to any driveway, where the existing bylaws only apply to driveways being built as a result of a sub-division of a parcel of land. The proposed bylaw lowers the maximum grade for a driveway from 15% to 12%. The proposed number of lots allowed to share a driveway was increased from 2 to 3. If more than 3 lots want to share a driveway, it will be considered a private road and must be built to town road specifications.

Michael Normyle said the difference between a driveway and a road built to town specifications was significant and he wanted to be sure the Commission understood that under the proposed bylaws, there would be fewer situations requiring a road built to town road specifications when a lot is sub-divided. There was some confusion about the difference between a shared driveway and a road. Michael Normyle said, off the top of his head he could not list the differences between the current standards for a town road versus the standard for a driveway. Brandy Saxton said allowing 3 lots to share a driveway would reduce the amount of impervious surface created and reduce the expense of development. She noted that allowing shared driveways promotes cluster development.

Tim Roper asked about the proposed minimum width of a driveway in regard to emergency vehicle access. Was the proposed minimum sufficient? Michael Normyle said a “hammer head” configuration was formerly required. The latest iteration of the bylaws also allows circular configurations. Tim Roper asked if there should be a minimum width as well as a maximum width. Naomi Johnson referred him to figure 3-02 which lists minimum paved widths by driveway length and number of lots served.

Naomi Johnson asked if there were any requirement for paving, as she saw several references to “paved width” Brandy Saxton said “paved width” does not refer to asphalt, it means the travel surface. She said “paved width” perhaps should be added to the definitions.

Tim Roper asked again whether the minimum width was sufficient. Naomi Johnson said she thought it was. She said VTrans regulates road width based on speed and number of vehicles expected to use the road. VTrans has minimum widths of 8 or 9 feet with no shoulders for some applications. Brandy Saxton said Table 3-02 was broken out by length to accommodate emergency vehicles. She noted that pull-off areas are required, if the driveway is long and narrow enough, in sub-section 3008.D(5). Fire engines may need to pass each other bringing

water to the fire. She recommended that the Chester Fire Department be consulted on these issues when the first draft of the bylaws is complete.

Michael Normyle asked if there was any language that required a maintenance agreement between the parties who share a driveway. Brandy Saxton said there was language that addressed a shared road but none for a driveway. She said she has not seen municipalities requiring maintenance agreements for driveways. Cheryl Joy Lipton said the less impervious surface the better, and the more lots who share the driveway the less impervious surface there would be.

Michael Normyle said he has seen many disagreements about driveway maintenance and would like to prevent them if possible. Brandy Saxton said driveways were also less expensive to construct than roads, so regulations that require fewer roads will save money. Cheryl Joy Lipton asked if there is typically an agreement for a shared driveway. Brandy Saxton and Naomi Johnson said there may be an agreement but an agreement is not mandated by the bylaws. After further discussion, the Commission decided not to change this sub-section.

Sub-section 3009 covered drive-through facilities. Claudio Veliz asked if the bylaws could prohibit drive-throughs. Brandy Saxton said drive-throughs could be prohibited. She said drive-through uses are listed (or not) in the zoning district section. In answer to a question from Barre Pinske, she said some municipalities do distinguish between drive-up ATM's, pharmacies and bank tellers, and drive-through restaurants. Naomi Johnson summarized the purpose of sub-section 3009, by saying, "in the case that drive-throughs are allowed somewhere, here are the standards for them."

Barre Pinske asked whether the standards proposed are basic good standards. Brandy Saxton said they are aimed at preventing vehicles waiting for drive-through service from blocking traffic flow on the roadway or in the parking area. Michael Normyle cited the standard 3009.A(6) which states that stacking lanes and service areas may not be located within district setbacks. He noted that driveways are currently not subject to setbacks and that this requirement is more restrictive than the current bylaws. He said this restriction could make a drive-through impossible on some parcels. No changes were proposed to this sub-section.

Sub-section 3010, Dwelling Units, addressed standards for housing. Brandy Saxton said this section was aimed at poorly planned conversion of houses into multiple dwelling units that do not provide for basic needs. It also addresses, to some extent, the issue of a tiny house. It gives a municipality some standards to combat unsafe housing conditions. She said these conditions are often seen when a motel is converted to permanent housing units. The Commission discussed this for several minutes. The following is a summary of the salient points.

Naomi Johnson pointed out, more than once, that the suggested bylaws will only come into play when someone applies for a building permit or conditional use permit. Brandy Saxton explained that zoning bylaws apply to structures. They cannot differentiate between structures that are being rented or structures that are occupied or used by the owner. Bylaws cannot have one set of requirements for rental units and a different set for owner-occupied units. Michael Normyle said there are no residential building codes in Chester, but if something is rented as a dwelling

unit, it must be inspected by the Vermont Department of Fire and Safety. The State of Vermont has regulations about rental units but enforcement is weak.

The proposed bylaw covers all types of dwelling units: apartments, single and multi-family houses, RV's, mobile homes, tiny houses and small houses. Under these bylaws, all dwelling units must be connected to potable water and wastewater systems. A tiny house would not be exempt from this requirement.

Barre Pinsky wondered what purpose the regulations serve. He questioned whether forcing people to meet rules about square footage was a reasonable thing to do. He thought people should be allowed to choose the size of their dwelling space.

Claudio Veliz asked where the standard of 150 square feet came from. Brandy Saxton said the Uniform Building Code did not have a minimum square footage number, but it had a series of requirements for a dwelling unit which were difficult to fit in less than 150 square feet, and 150 square feet became a de-facto standard.

The Commission expressed concern for the welfare of renters and looked for ways to use the bylaws to enforce reasonable standards on rental properties, but the bylaws cannot do that. The discussion ended when Naomi Johnson suggested that the regulations be left in place and people spend more time thinking about the issue.

Sub-section 3011, Energy Generation Facilities were discussed next. Brandy Saxton began the discussion by saying that it will be very rare for a town to have any say in an energy generation facility which is connected to the grid. A grid-connected installation is under the control of the state. It will have a certificate of public good from the Public Utilities Commission. These proposed regulations will apply to generation facilities that are not connected to the electrical power grid, such as solar hot water or a geo-thermal hot water system or an electrical generation system at a remote camp. Naomi Johnson noted that the Commission has just revised the energy chapter for the town plan and she did not know whether anything in the proposed bylaws will conflict with the town plan.

Cheryl Joy Lipton spoke about an enormous solar generating facility of about 100 acres in Ludlow. She said the power generated by the facility is being sold to Connecticut. She asked if Chester can regulate where the power generated is sold. Brandy Saxton said the state had taken that right away from towns. A discussion of the power grid, transmission lines and where electricity is actually used ensued. These issues were not directly connected to the bylaws.

Brandy Saxton said that subsections 3011.B – 3011.D are the standards that would apply to any generation facility that is not state controlled, i.e. not connected to the electrical power grid. She said that sub-section 3011.E, screening requirements, must apply to service facilities such as gas stations, as well as energy generating facilities. Energy generating facilities could not be singled out for excessive regulation by a municipality.

Claudio asked whether 3011.C (2) which addressed the height of a wind turbine, prevents the installation of an industrial wind generator. Brandy Saxton said, for example, that an industrial scale, 200-foot tower would generate so much power that a single site could not use it all. The

property owner would want to connect the wind turbine to the grid, which would then make this bylaw regulation irrelevant, because regulation of a grid-connected generator would be taken over by the state. Tim Roper said such a tower would have a certificate of public good. No changes were requested to this portion of the bylaws.

Sub-section 3012, Erosion Control, was discussed extensively. The following is a summary of the discussion. Brandy Saxton said there was some language in the current bylaws that addresses erosion control (Sections 3.7 and 5.4). This proposed language is more extensive. Brandy Saxton said currently a state permit is needed if an acre of soil is being disturbed, and she thought that threshold of soil disturbance is about to be lowered to 20,000 square feet. She said many people are surprised to learn that the state standard only applies to such large projects. Naomi Johnson pointed out that the proposed standard is more stringent than the current state standard.

Barre Pinske asked Brandy Saxton where this proposed bylaw came from. Brandy Saxton said communities have started to add erosion control and storm water standards in the last 5 – 10 years. Michael Normyle asked if the interest in stormwater control and erosion control was related to the phosphorus pollution in Lake Champlain. Brandy Saxton said it was partly that and also that state regulations were not being applied locally. Cheryl Joy Lipton said the issue of erosion in Vermont impacts the Connecticut River and Long Island Sound as well as Lake Champlain. Naomi Johnson cited the situation where a project tracks mud on the roads because the standards are not being followed. She said the project is not held accountable because the state doesn't have the resources to check on every project. If local regulation existed, the town could address the issue promptly.

Naomi Johnson said when a state permit is required, the state permit would meet the proposed bylaw's requirement for a professionally prepared erosion control plan. She noted that if the state determines the project is low risk, it will not require a professionally written erosion plan, and would issue a permit. That permit would meet the proposed bylaw requirement without the applicant having to pay for a professionally prepared plan.

Barre Pinske asked how much a professionally prepared plan would cost. Naomi Johnson estimated a plan would cost \$2,000. Barre Pinske asked if someone wanted to build a pond in the middle of a 50-acre parcel, would it require a professionally prepared erosion plan under the proposed bylaw? Naomi Johnson said it would require a professionally prepared plan if the square feet disturbed is greater than the threshold in the bylaw. Tim Roper said 10,000 square feet was a small space and wanted to know what constitutes disturbed. He asked if adding a lawn qualified as a disturbance. Brandy Saxton said it did. Naomi Johnson said that Barre Pinske's example of a pond in a large field would probably not require a costly erosion plan. Barre Pinske was relieved to hear that every erosion plan did not have to cost \$2,000. Michael Normyle said that a permit to create a pond was required by the State of Vermont in any case.

Tim Roper asked if complying with the 14 criteria set out in sub-section 3012.E would generally equal what would be present in a professional plan. How would a professionally prepared plan be different? Brandy Saxton said the prepared plan would document what was to be done.

Cheryl Joy Lipton said she understands that there is a limit of 10,000 square feet (one-quarter of an acre) before a professionally prepared plan is needed, but she wished there was a way to communicate these standards to property owners with smaller projects. Brandy Saxton said the standards could become a condition on a zoning permit.

Cheryl Joy Lipton asked how a homeowner would meet the general standards listed in Sub-section 3012.E. Brandy Saxton said the standards are mostly taken from the resources noted in the statute, the Vermont Agency of Natural Resource's *Low Risk Site Handbook for Erosion Prevention and Sediment Control*, which is cited in the bylaw. She said the handbook was illustrated and relatively easy to follow.

Brandy Saxton suggested that the proposed bylaw keep the 10,000 square foot requirement, but be modified to require a professionally prepared erosion plan only for projects requiring major site plan approval. This would exempt single family homes from the cost of a professionally prepared plan and make the bylaw likely to apply only to projects that had professionals working on it already. The other general standards in Sub-section 3012.E would apply to all projects. Cheryl Joy Lipton asked how the general standards would be enforced. Brandy Saxton said the standards are generally known, particularly to people such as heavy equipment operators who are key to a project. The Commission favored the change but did not formally vote on it.

Agenda Item 4 Set date for next meeting

The next meeting of the Planning Commission will be Monday December 10, 2018 at 7:00 PM and will run to 9:00 PM. The Commission will resume discussion of the bylaws at sub-section 3013, Fences and Walls. Brandy Saxton will be attending the meeting. This is not the normal meeting date for the Planning Commission. The date was chosen because the DRB will not be meeting on that date and Brandy Saxton was available on the 10th, but not on the normal meeting date of December 17th.

The Commission decided to have an extended session to continue work on the bylaws on Saturday January 5, 2019 from 9:00 AM to 1:00 PM.

Naomi Johnson moved to adjourn the meeting. Barre Pinske seconded the motion. A vote was taken and the meeting was adjourned.