

**TOWN OF CHESTER
PLANNING COMMISSION**

November 5, 2018 Minutes

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

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

Citizens Present: Brandy Saxton, Phil Perlah, Scott Wunderle.

Call to Order

The meeting was called to order at 7:00 PM by Chair Naomi Johnson.

Agenda Item 1 Review minutes from October 15, 2018.

Barre Pinske moved to accept the October 15, 2018 minutes. Claudio Veliz seconded the motion. There were two corrections on page 3. The word “discuss” was changed to “discussed” in the second full paragraph. The last sentence of the third full paragraph which described exceptions to the limit of 1 acre of cleared land in the R18 district was reworded to be clearer. A vote was taken and the minutes were accepted as corrected.

Agenda Item 2 Citizen Comments

There were no citizen comments.

Agenda Item 3 Review proposed zoning bylaw changes with Brandy Saxton

The Commission members all had binders with the text of the bylaws proposed by Brandy Saxton. She proposed to begin the discussion with Chapter 1, the Legal Framework, proceed to Chapter 4, Administration and then Chapter 3, Development Standards. She expected to get through Chapter 1 and possibly begin on Chapter 4 that evening. She said Chapters 1 and 4 have a lot of text required by statute which is not open for discussion.

Brandy began the discussion of Chapter 1 with the Purpose statement on page 1-5. She said many parts of the Purpose statement came from the existing bylaws. She noted that she had put some flood-related statements in the Flood Hazard section. She said the Purpose statement is not regulatory in itself, but it forms the foundation for the bylaws. She said the Purpose statements would be examined by a court of law when a bylaw is challenged to see if the Purpose statements support the bylaw in question. No one on the Commission requested changes to the Purpose statement.

Looking at subsections 1004 – 1009 Brandy noted that these subsections are similar to what is in the bylaws now. She said she included a disclaimer of liability (Subsection 1009) which was missing from the current bylaws. No one on the Commission requested changes to Subsections 1004 – 1009.

Sub chapter 1101 General Exemptions was discussed. This chapter lists actions where a permit will not be required. Cheryl Joy Lipton asked about 1101.A(2) and (3), demolition of damaged or destroyed structures. She felt that some protection against demolishing old buildings should be in the bylaws. She questioned what damaged and destroyed meant. Brandy Saxton replied that damaged and destroyed have specific definitions in Section 5 of the bylaws (5003.D(1) and (5)). Damaged means the cost of repairs would be less than 50% of the market value of the structure prior to the damage occurring. Destroyed means the cost of repairs would be greater than 50% of the market value prior to the damage.

An extensive discussion of what may be demolished and whether a permit was required followed. Here are the points raised:

The Town Plan seeks to protect historic buildings.

Cheryl Joy Lipton and others felt that the character of the town would change greatly if old buildings could be demolished and replaced at the property owner's whim.

There are several agencies and organization that designate buildings as historic. Among them are the National Register of Historic Places at the federal level and the Vermont State Historic Preservation Office at the state level. The Town of Chester has a historic district recognized by the National Registry of Historic Places. (It encompasses the section of Main Street between Lover's Lane Road and Maple Street including the land between the Middle Branch of the Williams River and Lover's Lane Brook.)

The proposed regulations governing what may be demolished are in Subsection 3007.C. That subsection says a conditional use permit is required to demolish a historic structure in the village districts. The structure may only be demolished if one of four criteria are met: 1) the structure is unsafe and blighted not due to willful neglect, 2) the structure has been offered for sale at market prices for 6 months and has not been sold, 3) the structure is obsolete and not suitable for an allowed use that would give a reasonable rate of return, or 4) the demo is part of a redevelopment project bringing substantial community benefit.

Historic Structure is defined in Section 5 of the proposed bylaws as structure within a historic district, in the National Register of Historic Places or the Vermont Registry of Historic Places or a structure determined to be historically significant by the State Historic Preservation Officer or the Vermont Advisory Council on Historic Preservation and eligible to be listed. Being listed as a Historic building has tax implications, but the agencies that designate historical properties do not regulate how they are used. Brandy Saxton said buildings within the Historic District did not have to be individually registered to fall under this regulation.

Claudio Veliz asked if there was anything in the current bylaws that would prevent someone from buying one of the buildings on the common, demolishing it and putting something else in its place. Michael Normyle said the current bylaws would not stop anyone from demolishing a building they own, regardless of its age or historical importance. In three districts, the Village Center, Stone Village and Residential – Commercial Districts, there are Special Criteria for new

buildings that require elements from a list of New England Architectural Character to be included.

The rights of the property owner to remove an old building that no longer serves his or her economic needs and replace it with another structure were discussed. Barre Pinsky pointed out that Chester is not a theme park and people should be allowed to replace an old building when they need to.

Practical considerations that were discussed are the dangers a damaged or destroyed building presents to the town and the hazards found in old buildings such as asbestos, lead paint and fuel oil. Some people raised the issues of the dangers to workers when demolishing a building. Naomi Johnson said the town does not currently supervise the construction of buildings now and it should not supervise the demolition process. Brandy Saxton said the regulations refer to cleaning up a site after demolition and address problems like holes in the ground or materials left behind. In the process of construction, the town bylaws require that the state be consulted, which will bring in the Division of Fire and Safety to look at the project. The demolition process so far has no state agency looking into hazardous materials or other environmental issues. She said requiring a permit creates a paper trail that will be helpful in the future.

Over the course of the discussion the Commission decided that the current proposed conditional use permit requirement for demolition should be expanded to cover more than just historic properties in the village zoning districts. The Commission wanted every property owner to get a permit before demolishing any damaged or destroyed building. They did not want to charge a fee for the permit. Small accessory buildings would not require a permit to be demolished. Brandy Saxton urged the Commission members to look at a list of properties that are currently given historical designation. The Commission will discuss this in more detail at the session on Saturday, November 10.

The Commission looked at the other exemptions in the list of 37. Brandy Saxton indicated that fences are sometimes controversial. There were no other changes requested to the list of exemptions.

Brandy Saxton indicated that 1102 – 1105 were primarily statutory requirements and part of the current bylaws. No one asked for changes to those subsections.

Subchapter 120 Prior Applications, Approvals and Uses addresses 6 issues: applications that were initially made under the prior bylaws, changes, expansions or discontinuation of use for any piece of property, abandoned development and damaged or destroyed structures. Brandy Saxton said the prior applications subsection (1201.A) uses the standard Vermont approach to a change in regulations during a project. The old rules will apply to projects that are in progress when the new rules go into effect.

On changes of use Brandy noted that the current bylaws will require a conditional use hearing when a retail store changes hands, regardless of whether the new business greatly resembles the prior business. In the proposed regulations (1203.A), a retail business in the same general category as the last business on the site will not trigger a change of use hearing, only a site plan

review by the Zoning Administrator. She used the example of a book store changing to a yarn shop as an example of something that will not require a permit. If the book store was going to be changed to a restaurant, a use not within the use definition, subsection 1203.B requires a permit. In response to a question from Cheryl Joy Lipton, Brandy confirmed that a permit would be required to make any change to a sign, except possibly in a sign plaza, where the space for and possibly even the format of the signs is preset.

Subsection 1204.A addresses expansion of nonresidential uses and requires permit if a nonresidential use is expanded to occupy additional space in a building or on a lot. Subsection 1204.B requires a permit if bedrooms are added to a residential dwelling unit. To illustrate this point, Brandy Saxton gave the example of changing basement space to a rec room, which would not require a permit, or changing the space to a bedroom, which would require a permit.

Naomi Johnson asked about a home owner renting out part of a residence. Brandy Saxton said if a separate dwelling unit is being created, a permit would be required. If a single room is being rented, nothing is required until the rental activity meets the level of a boarding house. Brandy discussed the difference between long- and short-term rentals briefly in answer to questions from Cheryl Joy Lipton and Naomi Johnson. Air B&B rentals are addressed elsewhere in the proposed bylaws. Michael Normyle said that anyone renting out living space is required to get a safety inspection done by the State of Vermont. The state Division of Fire and Safety does not yet have the manpower to carry out all these inspections. No changes were proposed to subsection 1204

Section 1205 addresses discontinued uses and when a new zoning permit is required before a discontinued use may be resumed. Brandy Saxton said the existing bylaw allows a two-year period before a new permit is required. The standard in Vermont is one year and she used that standard in this section. Barre Pinske asked if there was a good reason for requiring a new permit after only a year of sitting idle. He said time can pass quickly when a business is turning over. Brandy Saxton said the Zoning Administrator may extend the period for up to 3 years provided a good faith effort to market the property is ongoing. No changes were proposed for this section.

Section 1206 states what the town can do to clean up an abandoned project not completed before the zoning permit expired. The town can require the property owner remove construction materials and debris, fill in holes and restore ground cover to prevent erosion. Brandy Saxton said Section 4 has more details about how long before a permit expires. No changes were proposed to this subsection.

Section 1207 outlines actions to be taken in the event of a damaged or destroyed structure. Brandy Saxton noted that the town has authority under health, safety and welfare regulations and the Police department to address some aspects of a damaged or destroyed structure. Under Subsection 1207, action to secure and stabilize or demolish the structure must be taken within six months. Barre Pinske asked if six months was long enough to address the issue. Brandy Saxton said that the six month-limit only covered securing and stabilizing the building, not rebuilding or demolishing it. Brandy Saxton said she would adjust the text of 1207.B(2) to reflect the changes

the Commission has requested the demolition exemption in subsection 1101. No other changes were requested for this subsection.

Subsection 130 covers Non-conforming structures and lots. Brandy Saxton noted that subsection 1301 gives the Zoning Administrator the authority to issue a permit for an addition to a non-conforming structure if the change meets four criteria or for a non-conforming structure to meet building code or accessibility requirements. Subsection 1302, which covers non-conforming uses, allows the Zoning Administrator to issue a permit for a minor expansion of a non-conforming use and the Development Review Board to issue a permit for a greater expansion if the change will not result in a greater adverse impact on the character of the town. No changes were proposed to either of these subsections.

Brandy Saxton spent some time explaining state law changes that affect non-conforming lots, which are discussed in subsection 1303. The state law formerly required the merging of small non-conforming lots, which made them ineligible for development or sale. This is no longer required. Towns may continue to require that non-conforming lots be merged. The issue of whether a non-conforming lot, that would have been merged under the town bylaws, can be sold under the new law has not been settled in the courts. The proposed language in subsection 1303 does not require the merger of non-conforming lots, but it does offer a procedure for merging lots. Brandy Saxton said Vermont statute requires that a lot may be developed if it is at least 1/8 of an acre and it has access to appropriate water and sewer.

Subsection 1303.D addresses the issue of lots with inadequate frontage. Cheryl Joy Lipton asked about this regulation. No changes were requested to the non-conforming lots subsection.

Having reached the end of Section 1 General, the Commission turned to Section 4, Administration. The first subsection to be addressed was 410 Fees. This subsection supports the levying of seven types of fees, performance bonds and inspection costs and applies to fees mentioned in all sections of the bylaws.

Subchapter 420 covers the zoning permit process. Brandy Saxton said much of the language in 4201 and 4202 is required by statute. The Commission discussed 4203, Obtaining a zoning permit, in more detail because Chester has recently struggled with a zoning permit that was issued and not complied with in a timely fashion. The discussion centered on the length of time a zoning permit is valid. A zoning permit takes effect on the 16th day after it is issued, when the appeal period is over. An applicant may request a delay of the permit effective date while waiting for approvals of other permits. The Commission acknowledged that state permit and legal issues can delay a project. The proposed language that allows a delay in the issuing of a zoning permit is intended to cover that issue. Language allowing an extension is also included to cover natural disasters and other catastrophes that can delay project completion. Brandy Saxton said that in Vermont, the usual period of a zoning permit is 3 to 5 years. Zoning Administrator Michael Normyle wanted to set the initial period to 2 years with an extension possible. After some discussion, the Commission decided to make the initial period 2 years and allow a 2-year extension.

Subsection 4204 describes how, when and by whom a zoning permit may be amended. Brandy Saxton said this process was not covered by statute and the Commission had complete flexibility for this subsection. She said that under current rules, a permit could not be amended, a full DRB hearing would have to be held when a change to a permit is needed. No one requested changes to this subsection.

Claudio Veliz asked if any existing situation was exempt from grandfathering under these proposed bylaws. Brandy Saxton said that Vermont in general shied away from forcing conformance on existing properties. She said that the proposed site plan bylaws regarding storm water and access management could force some existing problems to be addressed. Michael Normyle asked about River Corridor language in the proposed bylaws. Brandy Saxton said she had sent the commission a section of the proposed bylaws that addressed that the previous week. (That section was part of the packet for this meeting.)

Agenda Item 4 Set date for next meeting

The next meeting of the Planning Commission will be Saturday November 10, 2018 from 9:00 AM to 1:00 PM. Brandy Saxton said on Saturday the group will resume looking at the proposed bylaws where it left off. She asked the Commission to read through the rest of Section 4 and start on Section 3. She said she will be making changes to the proposed bylaw as the Commission requests them. The version of the bylaws with these changes will be presented at the formal public hearings. The public is welcome at all Planning Commission meetings including the longer session to be held on November 10th. Cheryl Joy Lipton asked if Brandy Saxton could give a presentation on different ways to do zoning. It was resolved to make that presentation when the zoning districts are addressed again.

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