

**TOWN OF CHESTER  
PLANNING COMMISSION**

**Minutes May 17, 2018**

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

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

**Citizens Present:** Brandy Saxton

**Agenda Item 1, Review minutes from May 7, 2018 meeting**

Claudio Veliz moved to discuss the minutes. Barre Pinske seconded the motion. As this was a special meeting and some members of the Commission hadn't been able to review the minutes sufficiently, the Commission decided to table the discussion until the next meeting.

**Agenda Item 2, Citizen Comments**

There were no citizen comments.

**Agenda Item 3 Review Final Zoning Audit with Brandy Saxton 4:00**

Note: The Zoning Audit discussed here will soon be available online in the Latest News section on the front page of the town website, [www.chestervt.gov](http://www.chestervt.gov). Keep scrolling down to find it.

The floor was turned over to Brandy Saxton, the author of the Zoning Audit. She asked the Commission what they would like to delve into. Naomi Johnson suggested that Brandy address the specific questions that the Commission had sent her after the initial meeting when the Commission discussed the draft document.

The first topic addressed was sample bylaws for home business and home occupation, as she discussed in Block 9 of the Zoning Audit. The state requires that towns allow home occupations as permitted uses in their bylaws. Brandy said that Chester currently has what the state requires for home occupation and home business in its bylaws. The audit points out that clear standards for classifying a home occupation, which is a permitted use and does not require a hearing in front of the DRB, versus a home business which is a conditional use and does require a hearing. The sample she provided continues to include what the state of Vermont requires and adds clearer standards for determining whether the use is a home occupation or home business. The sample can be easily modified to include standards which fit Chester's needs and wishes. For instance, the home occupation sample language allows for one employee who is not living in the dwelling where the occupation is being carried on and who works primarily on-site. Chester could change that number if the Commission wants to. She said the limit of 25% of the dwelling devoted to the occupation aligns with tax laws which only allow 25% of a dwelling to be used for business, if the dwelling is to have homestead status. The statute for this says simply, "a minor portion" of the residence, which can lead to challenges to the interpretations used for different applications. Some municipalities allow the use of small amounts of space in an accessory building as part of a home occupation. This could be done in Chester. A home

occupation is seen as a home accessory activity. It would not be subject to site plan review in this model.

In discussing the scope of the home occupation and home business regulations, Brandy said the sample did not include retail. Traffic is a key issue, meaning it is frequently a cause of complaints from neighbors, particularly on roads that do not experience much traffic. For a non-retail business, such as a personal service business, the customers arrive generally by appointment and the flow of traffic is relatively constant. Retail businesses often have peak hours where traffic is heavier. Heavy traffic is more likely to cause problems and irritate neighbors than a small, steady flow. Retail currently is a conditional use in the Chester Bylaws.

Brandy Saxton addressed the differences between Home Occupation and Home Business. Activities that require outdoor storage of materials or machinery, and/or have more non-family employees, are generally classified as Home Business. Outdoor storage, accessory buildings, screening and lighting are issues associated with Home Businesses that most municipalities want to regulate. Brandy said that municipalities often exempt home offices from regulation, particularly when there is no external evidence of an occupation, no sign, and no employees. Their impact on community resources is minimal.

Sometimes a municipality will end up with a tiered classification of businesses which takes into account the district the business is located in. A village setting would have more regulation than a rural setting, where larger lots and more separation can reduce the impact of a business on the neighbors.

Michael Normyle asked about Brandy's experience with the size of lots as a way to regulate uses. She said the town could write requirements for minimum lot size or setbacks for Home Businesses. Barre Pinsky is a member of the Implementation Committee for the recently completed Master Plan. He spoke about the committee's interest in fostering self-sustaining citizens in Chester, meaning people who did not need a job working for someone else to support themselves, but set up some kind of business. He didn't want to make Home Occupation rules so stringent that it was difficult for those people to have a business. He asked if a district could be set up where a home occupation or retail is expected and allowed with less regulation than other areas.

Brandy said she has seen two approaches to that issue. In Brattleboro, on-farm businesses have been the cause of discord between neighbors in the past. They are now regulated by the type of road the business is on, i.e. on a highway or paved road it was one class. Within a mile of a paved road was a second class and more than one mile from the pavement was a third class. The third class was discouraged because dirt roads can seldom support the traffic brought by the business and neighbors often resent the disturbance.

A second approach is to allow multiple principal uses in a district. A residence would be allowed to have retail as a principal use. She said she had worked on home occupation rules for several years in New Haven, Vermont. In her experience, problems are most frequent on low-traffic roads, where a sudden influx of truck traffic is very disturbing to residents. The second most common problem she has seen is noise.

Michael Normyle said he felt that requiring some type of review is more essential to the success of the project than the classification of businesses and other labels in the bylaws. Claudio Veliz said that the DRB has told the Planning Commission many times that they are not allowed to

interpret bylaws. They need clarity and specificity in the language to avoid having their decisions challenged.

Claudio asked what Brandy Saxton's perspective on rural planning was. Brandy said she grew up on a farm in New York State. She said the underlying tenant of her upbringing is that people need to make a living from the land. Only people with means can afford to focus on making the land pretty. She finds an interesting contrast between people who think "rural" means open fields against a forested hillside with a couple of cows or sheep grazing on lush grass and people who focus on ways to earn a living from the land. She thinks that current statute in Vermont is overly focused on dairy farming, where farming has now diversified considerably. Regulations could be adjusted to foster that diversity. Allowing adaptive re-use of buildings is another issue that could be supported. A vacant barn could be adapted to many other uses if the bylaws allow them. The alternative is for the barn to sit empty and deteriorate until it collapsed. She cited Olivia's Croutons as a business that started without a permit in a vacant barn. It was not a home occupation and zoning didn't actually allow for the business. The townspeople generally approved of the use and no one complained. In contrast, a cabinet maker who set up a business in his carriage house in the village center met with resistance because it was too noisy, although the use was allowed by the bylaws.

Brandy also pointed out that rural planners in Vermont are not planning for growth. The growth rate is very low or negative. Instead, they look at reusing what is available. Housing needs are changing. The need for smaller home spaces is increasing, in contrast to the larger lots and homes more popular in the 70's through the 90's. Claudio asked if this pattern was a national trend or limited to an area such as southern Vermont. Brandy said it is certainly a Vermont trend. She also sees it in northern New York counties where she grew up, in New Hampshire away from the interstate corridor and in Maine away from the seacoast.

Claudio said he would like at some point to discuss to what degree the community is open to national chain businesses which bring conveniences such as cheap soda to Chester, as opposed to supporting locally owned businesses which preserve the unique character of Chester and Vermont. He feels this issue is integral to writing the Town Plan. Naomi Johnson said she was willing to put such a discussion on the agenda if it was clearly defined. Claudio said he would like to have Brandy Saxton present at that discussion. Brandy said she thought the discussion of the site plan review, the next topic, might address some of that issue.

The discussion then turned to the model site plan review document. The document Brandy Saxton presented has been the basis of site plan review bylaws for several Vermont towns. She said that state statute gives towns the right to require a site plan review, but Chester's bylaws do not address this. Brandy Saxton feels it's appropriate to use a site plan review in concentrated centers of activity where businesses open in spaces recently occupied by another business. The key question a site plan review asks is, "What will this new business look like?"

The model presented has two review classifications: minor and major. In the model, a minor review is a business opening where a similar business had been. A major review, which would involve a hearing before the Development Review Board, is needed when an addition is built, or a major renovation takes place, or the use changes, as when a retail store becomes a beauty salon. Brandy said that minor site plan reviews could be handled by the Zoning Administrator. Standards regarding the size and extent of the change would determine whether the Development Review Board would have to hold a hearing. The classifications of major and minor reviews are

not set by state statute. Clear standards on issues such as lighting, signs and parking are needed to support a Zoning Administrator conducting a review. The standards should be like a checklist, and the choices offered should be clearly black or white.

Barre Pinske said he agreed with Michael Normyle that a minor site plan review by the Zoning Administrator was a good thing. He also noted that Brandy Saxton is saying the review requires clear language in order to be fair and effective. This addresses the issue raised earlier about the DRB's need for clarity in the bylaws.

Brandy Saxton emphasized that in a site plan review, the question of whether the use is appropriate for the property is not discussed. The presumption is that the use is appropriate, since it is on a list of permitted or conditional uses. The issues to be considered in a site plan review are how the use will be fitted onto the property, where the parking spaces will go, where are the signs and lights. A conditional use hearing would be needed to determine whether the use is appropriate for the site. Naomi Johnson gave the example of putting a store where there had previously been a store as a reason for a site plan review instead of a hearing before the DRB.

Michael Normyle said more specifics could be added to the current bylaws to facilitate site plan review. Brandy Saxton gave the example of requiring a tree every 50 feet along a boundary as a specific landscaping standard that could be added to Chester's bylaws. Michael Normyle said there were regulations about lights on signs, but very few specifics about lights on buildings.

Claudio asked what experience Brandy had had with architectural review boards in Vermont. Brandy said there are very few in existence. There is not a strong history in Vermont of municipalities doing design reviews and having design guidelines. Some communities with designated downtowns have design review boards. They are required by statute to do so. Even then, there is quite a range of requirements and it hasn't been clear what must be done to meet those requirements. There are boards in Burlington and Shelburne. Some members of the Shelburne board bring a depth of knowledge and experience to the process that is very useful. Form-based code zoning regulations are bringing more attention to design standards.

Brandy went on to say that in Vermont design review boards have had a rocky career. The boards tend to lose sight of the fact that they generally do not have veto power on a project. Burlington is an exception because projects must obtain a certificate of appropriateness before they can be approved. The boards which do not have veto power are likely to push beyond their authority and be offended when pushed back. Shelburne has just instituted much clearer guidelines because of the difficulties they experienced.

Cheryl Joy Lipton recapped the discussion thus far by saying that if the bylaws made the requirements much clearer, an applicant could follow them and be certain that their site plan will be approved. Brandy agreed with that description. Cheryl Joy asked if there is a difference between an ordinance and a bylaw. Brandy said the difference is in the state statute that authorizes a municipality to write the regulations. Two different statutes grant the rights to Selectboards to pass ordinances and to Planning Commissions to write development bylaws.

Barre Pinske asked about exempting projects from parking requirements. Barre Pinske cited a building in the center of Chester that had apartments and retail space and only four parking spaces. Four spaces were not enough to meet the Bylaw standards. Michael Normyle said that

the 2014 revision of the bylaws granted the DRB the right to mitigate the parking requirements (Section 3.20.G) particularly in the Village Center District.

Brandy Saxton said parking is often a limiting factor in developing the village core. She said there were things that could be done with the bylaws to help the problem. In response to a suggestion that a variance could be used to mitigate parking problems, Brandy said that a variance is legally very limited and could not reduce the parking requirement. She said a waiver could be used to reduce required parking.

Barre asked if Brandy could help the Commission write waiver language. Naomi Johnson and Julie explained that the next step in the process, now that the audit is complete, is to seek bids for professional help to amend the Bylaws. Naomi Johnson said the Planning Commission is scheduled to look at this in December. Claudio Veliz asked Julie Hance when the project would start. Julie said a grant was involved. She expected to put the project out to bid in June. Once the consultant is selected there will be preparatory work to be done. She expected the project would kick off toward the end of the year, as Naomi had planned.

Brandy Saxton continued the discussion of the model Site Plan Review language. Section 1001.G, Site Plan Review Criteria, covers the same issues the existing General, Specific and Performance Standards in the Chester Unified Development Bylaws cover. She explained that traffic standard of 75 or more peak hour trips is a high volume. Michael Normyle asked if a traffic study would have to determine the number of peak hour trips. Brandy said the management of a retail establishment generating so much traffic would know the volumes they expect. Their financial success depends on generating those volumes. In her opinion, a traffic study would not be necessary to establish expected volume.

Brandy Saxton recommended a lighting standard that counted lumens as effective and easy to work with. Lumens are easier to measure than wattage or foot candles. She also recommended looking at Dark Sky principles. Claudio Veliz said that lighting is specifically addressed in the signage of the Chester Bylaws, section 3.26, but only generally in other places such as section 4.9, Performance Standards.

The lack of storm water regulation in the Chester bylaws is was also discussed. Brandy said that many municipalities do not have storm water regulations, but pressure is building from the state for municipalities to adopt standards and clean up poorly drained sites. Claudio asked if the interest in storm water regulations was fueled by the damage from Tropical Storm Irene. Brandy said she thought the issue was more about water quality. Michael Normyle asked if the state requirement for storm water still only applied to lots with greater than three-quarters of an acre of impervious surface. Brandy Saxton said she thinks the minimum is actually one acre. Cheryl Joy Lipton asked if Chester could lower the minimum. Brandy said that could be done. Michael Normyle said standards could be set in the UDB's and exceptions for issues such as topography could be allowed.

Brandy listed other standards included in the model site review language for signage, streets and sidewalks, and energy codes. Brandy said that Chester would not be obliged by state statute to include building code or energy code standards. Design standards would be referred to in this section as well.

Section H of the Model Site Plan Review discussed the application process and requirements. In this version, the Zoning Administrator would have the authority to waive requirements or to

require additional information if what has been provided is not adequate to make a determination. All decisions could be appealed back to the DRB. Brandy focused on section H.8 where the application requirements are listed. She said it was important to list specific and detailed requirements in order to make the application approval process straightforward, like checking off items on a list. She said that many communities have struggled with getting enough detail into these requirements to document the evolution of a project and determine what represents a change for a new use from previous uses.

Barre Pinske asked about the cost of meeting the requirements set forth. He doesn't want to set up regulations that require so much work to comply with that only national chains can afford to develop properties in Chester. Brandy said that the differences in the level of projects, major vs. minor will help keep costs down, and the ability of the Zoning Administrator to waive requirements where appropriate will also help. She agrees that not creating barriers is important, but by not paying attention to standards, problems can develop that will make the property look shabby and can cause issues with liability. She said, in many cases, the exercise of meeting requirements helps people organize their business plan and can contribute to the business' success.

Naomi Johnson thanked Brandy for her efforts and said the information will be very helpful to the Planning Commission going forward.

Brandy took up the Bristol Draft Extraction Regulations she sent. She said they covered an extensive variety of possible scenarios. She didn't think these particular regulations were actually adopted as written. She expected Chester would pick and choose which regulations would apply to conditions in Chester.

Cheryl Joy Lipton asked if some requirements for a project could be implemented over time if money was an issue. Brandy Saxton said sometimes a large project will be developed in phases. These projects are not usually handled by a Site Plan Review. Claudio said he thought a project had to be completed within a year in Chester. Michael Normyle said a building permit must be substantially completed within two years. Brandy Saxton said some things in a project, such as landscaping, might be delayed for some months by inclement weather.

#### **Agenda Item 4, Set date for next meeting**

The next meeting of the Planning Commission will be June 4, 2018 at 7:00 PM. Jason Rasmussen will be working with the Commission on the energy plan. Cheryl Joy Lipton moved to adjourn the meeting. Claudio Veliz seconded the motion. A vote was taken and the motion passed. The meeting was adjourned.