

**TOWN OF CHESTER
PLANNING COMMISSION**

December 10, 2018 Minutes

Commission Members Present: Naomi Johnson, Claudio Veliz, Barre Pinske, Cheryl Joy Lipton 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 December 3, 2018.

Tim Roper moved to accept the minutes from December 3, 2018. Cheryl Joy Lipton seconded the motion. Tim Roper had typo corrections on page 2 and page 4, and a question about the term “industrial strength” instead of “industrial scale” on page 5. Cathy Hasbrouck agreed to double check, but she believed that the term “strength” was used. There were no other corrections to the minutes. A vote was taken and the minutes were accepted.

Agenda Item 2, Citizen Comments

There were no citizen comments.

Agenda Item 3 Review of proposed changes to Unified Development By-Laws

The discussion began with Section 3013 Fences and Walls on page 3-51. Tim Roper asked if a permit was required to build a fence or a wall. Brandy Saxton said it depended on the height and location. A permit was needed unless one of the exemptions listed in Sub-Section 1101.A (8), (9) and (10) was met. Michael Normyle asked about Sub-Section 3013.C(3), which said fences and walls could not obscure vision at a height above 3 feet at an intersection. Brandy Saxton said that limit was needed for line of sight at an intersection. Michael Normyle asked if there was a specification of how far from an intersection the 3-foot limit ran. Brandy Saxton said she thought it was 30 feet and she would check.

Tim Roper asked what defined an agricultural fence. Brandy Saxton said it would have to meet the definition of a farm structure which the state maintains. Tim Roper asked if a farm structure fence had to be confining farm animals before it could be called an agricultural fence. Brandy Saxton said animals were not always required, and cited the case of an orchard or other crops that need to be protected from deer. Tim Roper asked what the mechanism of enforcement would be if someone built a fence without a permit. Brandy Saxton said it could result in a notice of violation or a ticket issued by the Zoning Administrator. Tim Roper explained that he had a neighbor who had built a fence of a single strand of barbed wire all around his property because of a dispute with another neighbor. He felt the fence was dangerous and wanted to

know how it would be treated in this version of the bylaws. Brandy Saxton said it would be considered a safety hazard and a notice of violation could be issued.

Claudio Veliz asked where non-retaining stone fences would fit in this bylaw. Brandy Saxton said the bylaw did not distinguish between fences and walls, as long as the wall was not a retaining wall, so a stone fence would be a fence. Cheryl Joy Lipton asked if stone walls were considered historic structures in Vermont. Brandy Saxton said she did not think so. Claudio Veliz pointed out that new stone walls were constantly being built.

Barre Pinske asked about Sub-Section 3013.D(2), a requirement that retaining walls over four feet high must have a fence at the top. Brandy Saxton said the fence was intended to prevent people and vehicles from falling over the edge of a retaining wall. Barre Pinske said not every retaining wall was in a place where people are likely to fall and that a fence at the top of a wall may spoil a landscape design. Michael Normyle suggested that the four-foot limit could be gotten around by having two smaller retaining walls slightly offset to cover the height. He said he had seen retaining wall issues at Okemo. Barre Pinske cited a local example of a lovely retaining wall that would be spoiled by the addition of a fence at the top. He felt the purpose of the wall (beyond retaining earth) ought to be considered. A wall that establishes a walkway or a driveway could need a fence at the top, a wall in the middle of a garden may not.

Claudio Veliz asked how the fence requirement at the top of a retaining wall compared to requiring a railing on decks higher than 18 inches. Brandy Saxton said there was similar language for decks. Naomi Johnson said it would be the homeowner's decision to put a fence on top of a retaining wall based on the need for safety. Barre Pinske agreed that the question of safety was paramount and the purpose of the wall should be considered as well. Naomi Johnson suggested that the distance of the retaining wall from the property line be considered. A retaining wall close to the edge of the property could be more prone to a stranger falling off than a wall closer to the house which everyone who frequents the area knows about. Cheryl Joy Lipton suggested that the fence on the top of the retaining wall be recommended, not required. Brandy Saxton said she could work on language options to make it more flexible. She noted that most retaining walls will not be reviewed by the Development Review Board, they will be handled by the Zoning Administrator. Therefore, the language needs to be clear and specific so the Zoning Administrator doesn't have to invent standards. She said she would consider residential vs. non-residential and distance from the property line in her revisions.

Claudio Veliz asked to change the word "qualified professional" in Sub-Section 3013.D(2) to "licensed design professional". Brandy Saxton said she used the term "qualified professional" fairly frequently in the bylaw document and, in this case, it included several professions which were qualified to build a retaining wall. A quick poll of the Commission indicated that "qualified professional" was acceptable and no change was needed. Brandy Saxton agreed to define in general terms what she meant by "qualified professional".

Tim Roper asked about the horizontal distance required between terraced retaining walls. He felt the 8-foot standard in Sub-Section 3013.D(4) was too broad. Brandy Saxton said 8 feet was broad enough to maintain the terrace. Barre Pinske asked why retaining walls should be allowed

at all. Brandy Saxton said retaining walls allowed development on steep slopes, which are common in Vermont. She said they hold back soil and water. Cheryl Joy Lipton suggested the total height of all the walls constructed should be considered when requiring a professional. She also suggested that development on steep slopes should be discouraged and allowing retaining walls would tend to encourage development on steep slopes. An informal poll of how wide the terrace between two retaining walls should be was taken. The width chosen by the poll was 8 feet.

Claudio Veliz requested a change to 3013.E(3). He wanted the words “or form” added at the end of the statement “Must not be constructed of barbed wire, razor wire or similar materials”. He also asked to change the word “good” to “presentation” in 3013.E(2), ‘Must be constructed that any support posts are to the inside and the “finished” or “good” side faces out’. Brandy Saxton and the Commission members agreed to the changes.

Sub-Section 3014, Grading, Excavation or Fill was discussed. Brandy Saxton pointed out that small amounts of grading, excavation and fill were covered by exemptions, and that extraction operations were a separate use not covered here. Tim Roper asked if this sub-section covered disturbances of less than 10,000 square feet, the baseline cited in the Erosion Control sub-section (3012). Brandy Saxton said the disturbance square footage was not the issue here. It was about the material removed or brought in to a site. The exemptions sub-section 1101.A(7)(b) specifies that 10 cubic yards of material may be brought in without a permit.

Tim Roper suggested that the word “elevation” be added after the word “grade” to 3014.E(2), ‘Grading excavation or fill must not alter the pre-existing grade by more than 4 feet.’ Brandy Saxton agreed with that. Tim Roper asked why the limit was 4 feet. He wondered what would happen if he wanted to build a retaining wall and raise some part of the existing grade by 16 feet. Brandy Saxton explained that this part of the Bylaws, Section 300 were General Standards and Sub-Section 3014.E is also a general standard. More substantial projects such as a 16-foot retaining wall would be reviewed by the Development Review Board, which may allow exceptions to the general standard.

Claudio Veliz asked if the 2:1 ratio cited in 3014.E(3) was a state standard. He thought it would allow a very steep slope. Brandy Saxton acknowledged it was a very steep slope. Naomi Johnson said steeper slopes than 2:1 were allowed by the state. Claudio asked if the area of steep slope was or could be limited. Brandy Saxton said other regulations for disturbed soil would apply to such a project, which would address the disturbance.

Cheryl Joy Lipton asked if the 2:1 standard should be changed. Naomi Johnson said that this standard corresponded with the state requirement for reclamation of a gravel pit. Tim Roper asked about 3014.E(4), which states. “Grading, excavation or fill must not affect existing drainage patterns on adjacent lots or public rights of way.” He wanted to know how an intentional change to a drainage pattern would be handled. Brandy Saxton this bylaw was meant to apply only to small changes to one piece of property. A change to the stormwater drainage system would be addressed by other regulations. This bylaw was meant to prevent someone

from gradually filling in a gully on their property, which eventually could affect the stormwater drainage on their neighbor's property.

Sub-Section 3015, Manufactured Housing was addressed next. Brandy Saxton said the pre-existing manufactured home parks and new, existing or converted manufactured home park sections (3015.D and E), were required by statute. Michael Normyle verified that the standards set forth in 3015.B, Foundations were correct. Brandy Saxton said they were. She said the standards for foundation were more detailed in the sub-section covering the Flood Hazard area. Those standards are coming from the state and were developed after Tropical Storm Irene washed so many manufactured homes away.

Claudio Veliz asked whether the foundation footing should be required to be below the frostline. He suggested that a flat slab on grade that was insulated would not be subject to heaving. He asked if the text of the foundation standard came from state standards. Brandy Saxton said the text was not mandatory state language, but it followed building codes and flood regulations. Other slab systems such as the Alaskan insulated floating slab were discussed.

Brandy Saxton asked the Commission to what extent it wanted to include building code specifications in the bylaws. She said the Zoning Administrator was not going to inspect the project while it was under construction. Zoning Administrator Michael Normyle said he was not a qualified building inspector. She said it was possible to see whether the slab was below grade and whether the manufactured home had masonry skirting just by visiting the lot. It would not be possible to verify that the slab was insulated.

Michael Normyle said he would be more comfortable if the bylaws required a licensed professional to inspect a manufactured home installation to verify that the standards have been met. The Commission agreed that the manufactured homes and propane tanks that floated away during TS Irene created a dangerous situation. Cheryl Joy Lipton wondered why this type of new construction was allowed in a Flood Hazard area. Brandy Saxton said new construction is not allowed by the Flood Plain language, but the state required that existing manufactured homes be allowed to remain where they were.

Barre Pinske said manufactured homes were owned by people of limited financial means. He questioned why regulations should add to the cost of a home for people who struggled to afford it. Claudio Veliz said an insulated slab on grade did not add much to the initial cost, and it reduced the cost of insurance. Naomi Johnson asked Claudio Veliz if he had specific additions to the requirement. Claudio Veliz said he would change the last sentence of 3015.B(2) to say, "The foundation must extend below the frostline or must include insulated masonry skirting." Michael Normyle asked if 2x2 blue board insulation would be sufficient. Claudio Veliz said it would.

Tim Roper suggested that the first sentence of 3015.B(2) be amended to say, "The foundation must be excavated and must have continuous skirting or backfill, leaving no uncovered open areas except for vents and crawl space *access*." The Commission agreed to change the last words to "except for access to vents and crawl spaces."

Claudio Veliz asked about 3015.D(4), “A lawfully-existing site within a mobile home park that is vacant or unoccupied will not be considered abandoned or discontinued under this bylaw.” He wanted to know if that was state mandated language. Brandy Saxton said it was required by the state. She said individual lots which were vacated in a mobile home park could not be treated as separate entities, so an abandoned lot within a park cannot lose permission to have a mobile home installed. The Commission discussed whether there were any existing mobile home parks in Chester. Brandy Saxton said there was a registry of mobile home parks and she would check to see if Chester has any. If Chester has no mobile home parks listed in the registry, then the pre-existing language could be removed. The language for expanded and converted parks could also be removed. Brandy Saxton said she favored treating a mobile home park like a planned unit development.

Cheryl Joy Lipton asked if Chester needed to allow mobile home parks, which would provide housing for low income families. Tim Roper asked if the Commission wanted to allow mobile home parks in the village center. Brandy Saxton said there were state and federal fair housing laws which required that mobile and manufactured homes be treated the same way other types of housing are treated. Brandy Saxton said these proposed bylaws have design standards and site size standards that address concerns with mobile and manufactured homes. Claudio Veliz said mobile homes are not substantial. Michael Normyle said the new Vermod house is a pretty well-built structure. Brandy Saxton said the Vermod exceeded HUD standards. Tim Roper said the snow load standard for manufactured housing is lower than for other types of housing.

Brandy Saxton said she included the conversion of mobile home park language because the land is not easily used for anything else and removing the park would be a reduction in affordable housing. Allowing it to be converted to some other form of housing such as small houses or cottages would help preserve the housing stock.

Cheryl Joy Lipton wanted the mobile home parks to be sited in such a way as to allow solar panels. Tim Roper said the roofs of manufactured homes are not strong enough to support solar panels. He said he had to investigate this issue as part of his job. Cheryl Joy Lipton asked if a stronger roof could be required. Tim Roper said the mobile or manufactured home would have to be custom-built to meet that specification and Vermont currently requires stronger roofs on mobile and manufactured homes.

Cheryl Joy Lipton said she wanted all new housing to be capable of utilizing solar panels. That would mean that all new housing must be oriented to solar south. The Commission discussed the complexities of orienting new buildings so that the roof had a solar-south exposure. Was this always possible? Could the bylaw require ground mounted solar capacity? Cheryl Joy Lipton said ground mounted solar blocks vegetation, which is another antidote to climate change.

Brandy Saxton said standards could be written for that and wondered whether the bylaws would be adopted with those requirements. Naomi Johnson summarized the discussion, saying the proposed bylaw would require the applicant show that the design allows for solar collection when applying for a permit. Brandy Saxton pointed out that the requirement must be something the Zoning Administrator can determine.

The question of which citizens, if any, would “push back” or object to the requirement was raised. Naomi Johnson said the energy survey conducted a year ago showed substantial support for renewable energy, but for wind installations as well as solar. She wondered if requiring solar capacity would be objectionable to people who preferred wind.

Cheryl Joy Lipton said she didn’t want to require solar installations she only wanted to make it possible to install solar in the future. Claudio Veliz proposed that the wording be worked on outside of the meeting. Barre Pinske asked if the wording was for the bylaws or the Town Plan. Claudio Veliz said it would be for both. Tim Roper said that the State of California has passed a law that all new buildings be solar-ready. Naomi Johnson said the Commission would return to the issue.

Brandy Saxton said she could provide some examples of bylaws to consider. She said that the proposal borders on building code. The California law is part of the building code. Vermont does not have a state-wide building code. Michael Normyle said the only thing a home owner or builder is required to do is to sign a statement saying the building meets the Vermont Energy Code. Brandy Saxton said there is a challenge in regulations to address the issue of a single- or two-family home being built on a lot which is not being sub-divided. Existing regulations, which cover single- and two-family homes being built on an existing lot, do not have much enforcement power. Barre Pinske said he didn’t think it was reasonable to require someone to change the design of their house to meet solar orientation standards.

The next Sub-Section considered was 3016, Ponds. Barre Pinske asked why this section was needed. Brandy Saxton said that the state only regulates ponds over a certain size, which she couldn’t immediately recall, but thought it was about an acre. Ponds represent impounded water. The town needed to consider what would happen if the pond suddenly drained out. The proposed bylaw addressed ponds over 200 square feet. Brandy Saxton said she based the 200 square feet figure on other exemptions in sub-section 110, but the figure could be higher before the amount of water represented a serious threat to safety.

The Commission reviewed the general standards for the Ponds sub-section. Barre Pinske asked if the proposed spillway shouldn’t be stone instead of grass. Brandy Saxton said grass will infiltrate the water, slow it down and absorb more of it than stone. Tim Roper asked if dredging a pond required a separate permit. Brandy Saxton and Claudio Veliz said dredging was a maintenance activity and no permit would be required.

Barre Pinske said he wished regulation was not required. Claudio Veliz said a pond could affect other people’s lives and regulation was needed to protect others. Michael Normyle said he had only been approached three or four times about ponds and he was aware of only one being built in Chester. Naomi Johnson proposed that the size of the pond requiring regulation be increased to 1,000 square feet and 4 feet deep. The Commission concurred.

Sub-Section 3017 Portable or Temporary Structures were discussed next. Brandy Saxton reminded the Commission that temporary structures associated with construction were addressed in Sub-Section 3006. Tim Roper suggested that Sub-Section 3006 be added to the checklist for permits. Cheryl Joy Lipton questioned the list of structures in 3017.A(2). She didn’t think it was

reasonable to require a permit for putting up a tent over the weekend for guests or a children's sleepover. Brandy Saxton agreed that those structures were covered in the Camping and Camping Units section 3005 and proposed removing 3017.A(2). Michael Normyle was concerned about removing regulation for tiny houses. Brandy Saxton said a tiny house had to be considered either a dwelling unit or an RV. The proposed bylaws had regulations for each category.

Examples of trailers used for storage around Chester were cited. Michael Normyle said this proposed language would be helpful to the Zoning Administrator. Cheryl Joy Lipton and Barre Pinske asked if the size of the structure mattered. Brandy Saxton said the size issue was addressed in the exemptions sub-section (1101.A(14) and (17)). She said this section was written to address sizable structures which people want to believe do not require a permit because they have wheels and are portable, or they believe they are temporary because they have no foundation. Michael Normyle said he currently has complaints from neighbors about several construction trailers on a lot.

Barre Pinske said trailers and other temporary or portable buildings allow people to keep their junk contained and support their lifestyle. Was this regulation going to impose a burden on those citizens? Brandy Saxton said she needed to clarify the section by separating regulation of temporary structures from regulation of portable structures. She also agreed to cross reference the exemption section with the regulation section so it would be easy for someone to find both relevant pieces. Claudio Veliz noted that there was no definition for tiny house or small house. He asked if it would be helpful if definitions for those terms were included. Brandy Saxton said she did not like to regulate through definitions. She would look at references to tiny houses and decide if a definition would help. Naomi Johnson said the Commission will wait for the revised sub-section.

Sub-Section 3018, Riparian Buffers was discussed. Brandy Saxton said that if the Commission decides to include River Corridor overlay district language, she would move this section on Riparian Buffers to the River Corridor sub-section (Sub-Section 2203). Michael Normyle said he thought that the Commission decided to take River Corridors into consideration two years ago. At the time he understood that River Corridor regulation would impact a considerable amount of existing development of both homes and businesses in Chester. Brandy Saxton agreed that the issue was significant. She said Chester could choose to apply different standards to different rivers and streams in town or different zoning districts. Chester may choose to reduce the size of the buffer in the proposed regulation from 50 feet to something lower, particularly in the village zoning districts. If Chester did that, Brandy Saxton said, it may not qualify for state EREF (Environmental Research and Education Foundation) money. Brandy Saxton said the 50-foot riparian buffer must be upheld and the buffer on larger rivers would have to be even wider to obtain the EREF money.

If the Commission chose to implement the River Corridor language, the 50-foot buffer required for riparian areas would affect a number of existing homes and businesses. Brandy Saxton said she had set up a riparian buffer of 10 or 20 feet for other towns in the village center districts. Claudio Veliz asked how this riparian buffer would apply to existing development. He cited the

Dunkin' Donuts drive through that was approved earlier in 2018 and would have traffic lanes very close to the Williams River. Brandy Saxton said there was language in the River Corridor Overlay to address modifying existing development going forward. She said outside of the village center there was more room to meet the 50-foot standard. She also said that from an ecological and flood-attenuating point of view it was more helpful to regulate the riparian buffer around smaller streams than to focus on the larger rivers in village centers. Cheryl Joy Lipton said 50 feet was actually a small buffer, particularly near the bottom of a watershed.

Claudio Veliz asked what options the town had regarding River Corridor construction issues. Brandy Saxton said the proposed regulation was requiring a setback. It also allowed for recreational activities and uses, such as a trail along the river. She noted that the state regulations do not allow any uses, recreational or otherwise. Barre Pinske asked what a mapped waterway was. Brandy Saxton said it was a waterway mapped by the state and it includes very small brooks.

Naomi Johnson returned to Brandy Saxton's statement about choosing to include the River Corridor Overlay language in the bylaws. Brandy Saxton confirmed that the River Corridor Overlay had not been discussed yet. She looked to see whether the language being discussed was also part of the River Corridor Overlay.

Barre Pinske said the 50-foot buffer could be a problem for a home owner who needed a garage and had a small stream on the property which would prevent siting the garage appropriately near the house. Brandy Saxton referred the Commission to the Agency of Natural Resources Atlas to see size of the streams mapped. She noted that the map does sometimes pick up seasonal streams.

In response to Barre Pinske's question about the riparian buffer for a small stream preventing the appropriate siting of a garage, Brandy Saxton said the Commission has a policy decision to make about riparian buffer requirements. Should they be town-wide or should rural districts be handled differently from village districts. She suggested that the maps be consulted to evaluate the present hazards. Michael Normyle said he could get copies of maps to the Commission members.

He asked if the state has finalized River Corridor maps yet. Brandy Saxton said the state has made the draft maps final. She said there is new model language available for bylaws. The language does allow the River Corridor map to be amended, but the town must request the adjustment, the landowner is not allowed to appeal. The mechanism for adjustment requires a map from FEMA. Brandy Saxton said the River Corridor is defined as the meander belt of a river plus 50 feet. She agreed that it is a large area. Naomi Johnson said she thought there was a significant need to address riparian buffers in Chester and the Commission will start studying the maps available. Claudio Veliz said insurance companies are beginning not to insure properties with significant risks. Cheryl Joy Lipton said that vegetative buffers around streams will make the flooding issue more stable than it is now.

Brandy Saxton suggested that a broader policy discussion on this topic is needed. It was agreed to stop the discussion at this point and resume discussion of Section 300 at the next meeting.

Brandy Saxton agreed to provide the Google Earth version of a map of Chester's river corridor area and a second map of just a 50-foot buffer around mapped streams. It was discovered that not every Commission member had a copy of sub-section 220 the proposed River Corridor language. Brandy Saxton agreed to send the latest copy of that section.

Agenda Item 4, Set date for next meeting

The next meeting of the Planning Commission is Saturday, January 5, 2019 at 9:00 AM.