

**PLANNING AND ZONING COMMISSION
REGULAR MEETING – MINUTES
SEPTEMBER 11, 2013 – 7:00 PM
NEW HARTFORD TOWN HALL- 530 MAIN STREET**

PRESENT: Chairman James Steadman, Gil Pratt, Ted Stoutenberg; Alternates Robert Moore and Martin Post; Land Use staff Certified Zoning Enforcement Officer Rista Malanca and Recording Secretary Stacey Sefcik.

ABSENT: Daniel LaPlante; Alternate Peter Ventre.

Chairman Jim Steadman called the meeting to order at 7:04PM. All regular members present were seated for the evening. Alternate Robert Moore was seated for Daniel LaPlante. The proceedings were recorded digitally and copies are available in the Land Use Office.

1. PUBLIC HEARINGS:

A. Andrea Dobrozensky, 48 Gibson Lane – Special Exception per Section 3.6C of the Town of New Hartford Zoning Regulations for an Accessory Apartment.

Gary Giordano, PE, addressed the Commission on behalf of the applicant. Mr. Giordano submitted proof of notice to abutters, information regarding the approval for this project obtained from the Inland Wetlands Commission, Farmington Valley Health District (FVHD) approval, the assessor's card for the property, full and reduced size plans of the proposal, and pictures of what the proposed structure would look like. Mr. Giordano explained that there had been a change to the plans with regard to the septic system; at the recommendation of the FVHD, they had changed from a 2-galley system to a Mantis system. He explained that there had been a lot line revision whereby the piece where the accessory dwelling unit was proposed had been sold to Ms. Dobrozensky by James D'Angelo.

Mr. Giordano then reviewed each of the requirements of Section 3.6.C.2 with the Commission. He explained that Andrea Dobrozensky resided at the property and would continue to do so. The property in question was 5.3 acres and was served by septic system and well. Mr. Giordano stated that the proposal met all setback requirements in the Zoning Regulations, and he referenced the zoning table on the plans for the project. He then referenced the picture of the proposed accessory dwelling unit and the picture of the existing house on the assessor's card to show that the proposed structure would match the character of the existing dwelling. Mr. Giordano explained that the proposed accessory dwelling unit had an open floor plan for the first floor with one bedroom on the second floor; the total square footage of the house would be 842 square feet. Therefore, the proposal met the requirement that the accessory dwelling unit be at least 500 square feet in size. He explained that the existing house was 3042 square feet and 40% of this would be 1316 square feet. As the proposed accessory dwelling unit was 842 square feet, it was well under the maximum size allowed by the Zoning Regulations. Mr. Giordano stated that the parking for the accessory dwelling unit would be screened by plants such as arborvitae; the existing house had ample parking as well.

Hearing no comments or questions from the Commission, Mr. Steadman opened the floor to public comment.

Cindy Bohan, owner of 70 Hayward Road, addressed the Commission with a question regarding drainage for the proposed new structure. She explained that they had encountered drainage issues after the construction of the primary house on Ms. Dobrozensky's property, and she wanted to verify that the accessory structure would not worsen the situation. Mr. Giordano explained that while Ms. Dobrozensky originally planned the accessory dwelling unit nearer to Ms. Bohan's property line, they ultimately abandoned that plan due to the soils present on that part of the property. He stated that the new location was on the other side of the lot away from Ms. Bohan's property and none of the drainage was routed in the direction of Ms. Bohan's property. Ms. Bohan also expressed concern regarding the potential for noise and light pollution, noting that Ms. Dobrozensky had floodlights and frequently played loud music throughout the day. She questioned who would be using the property, and Mr. Giordano stated that he believed an elderly relative would be using the accessory dwelling unit. Ms. Malanca explained that the Zoning Regulations did not specify who could or could not live in an accessory dwelling unit. She stated that the application was complete and it appeared to meet the requirements of Section 3.6C; she also noted that the Town did not currently have a noise or lighting ordinance.

Bill Bohan, also owner of 70 Hayward Road, then addressed the Commission. Mr. Bohan reiterated concerns about drainage, noting that they now had a stream on their property than had not been present prior to the construction of Ms. Dobrozensky's main house. Mr. Giordano then reviewed with Mr. Bohan the drainage plans for the accessory dwelling unit, noting that the area would be graded away from Mr. Bohan's property; all runoff would be routed to an adjacent wetlands area.

Kimberly Grustas, 27 Meadow View Lane, next addressed the Commission. Ms. Grustas reiterated Ms. Bohan's noise concerns regarding the playing of loud music for long periods of the day. Mr. Giordano suggested that the neighbors' concerns regarding noise might be satisfactorily addressed directly with Ms. Dobrozensky.

Hearing no additional comments or questions from the public or the Commission:

MOTION Mr. Stoutenberg, second Mr. Post, to close the public hearing in the matter of **Andrea Dobrozensky, 48 Gibson Lane – Special Exception per Section 3.6C of the Town of New Hartford Zoning Regulations for an Accessory Apartment**; unanimously approved.

B. Text Amendment to Section 5.6 “Public Service/Utility District” of the Town of New Hartford Zoning Regulations.

Ms. Malanca briefly explained that during the process of preparing for the public hearing on the zone changes for Metropolitan District Commission (MDC) and Regional Refuse Disposal District #1 (RRDD #1) property, it was discovered that the current text of Section 5.6 did not actually give information regarding what was permitted. Because of this the Commission had decided to table consideration of the proposed zone changes until the contents of Section 5.6 were updated. Ms. Malanca explained that she and Marty Connor, the Town's planning consultant, had subsequently met with Carol Youell and Jim Randazzo of MDC and Jim Hart of RRDD #1 to discuss their current uses of the property in question, as well as what uses they were anticipating in the future. From this discussion, Mr. Connor had completely rewritten Section 5.6, and he included specific uses that would be allowed without any permits, allowed by zoning permit, and allowed by site plan review. Any uses that did not meet these definitions but were still in line with the public agency's charter could potentially be allowed by special exception. Any uses that were not in line with the public agency's charter were specifically prohibited.

Mark Branse, the Commission's attorney, then explained that any uses currently in effect would be permitted without a permit. He explained that the list in the proposed regulation was generated as a result of Ms. Malanca's and Mr. Connor's discussion with representatives of MDC and RRDD #1. Mr. Branse explained that any expansion of these current uses that was less than 500 square feet would require a zoning permit; any expansion of these current uses that was greater than 500 square feet would require site plan review. If anything was proposed that was not specifically listed but that did further the purposes of the public agency as specified in the agency's charter, then it would require a special exception. Mr. Branse noted that the proposed regulations would potentially allow solar panel generation facilities subject to site plan review; this had been included as RRDD #1 had expressed interest in eventually engaging in this activity. He informed the Commission that any activity that did not directly further the purpose of the public agency as stated in its charter would be prohibited. Mr. Branse explained that a public agency or any subsequent owner could always apply for a text amendment or zone change.

Mr. Pratt noted that there was no representatives of MDC or RRDD #1 present at the meeting; he questioned whether they had expressed approval of this regulation. Ms. Malanca informed the Commission that representatives of both MDC and RRDD #1 had been sent the most updated versions of the proposed text amendment approximately one month prior to the public hearing; however, she had not heard back from RRDD #1. She stated that she had received a letter earlier that day from James Randazzo of MDC via an email from Carol Youell. Ms. Malanca stated that she had enquired whether anyone from MDC would be attending the public hearing, and she was told no one would be able to do so. Members of the Commission reviewed copies of the letter from James Randazzo dated September 11, 2013; they then asked Mr. Branse to address each question raised in this letter.

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In answer to question #1 regarding the effect of the zone change on land assessments and property taxes, Mr. Branse explained that these rates were set by statute and were not determined by the Planning and Zoning Commission. Mr. Pratt questioned whether the assessments and property taxes would remain the same as they were currently, and Mr. Branse responded affirmatively. Ms. Malanca reminded the Commission that they had discussed this point with the Town's Assessor, Beth Paul, at their March 27, 2013 regular meeting, and Ms. Paul had also stated that the change from a residential zone to the Public Service/Utility District Zone would not affect the properties' assessed value. Mr. Branse also noted that there was an appeals process for property tax assessments.

Regarding question #2, Mr. Branse explained that an underlying assumption in zoning law is that, if something is not specifically permitted, it is deemed prohibited. He explained that a property owner could always file an application with the Planning and Zoning Commission for their decision or alternatively seek a ruling from the Zoning Enforcement Officer and if then desired, appeal that ruling to the Zoning Board of Appeals. With regard to disposition of land, Mr. Branse explained that if the property were sold, it would still be zoned Public Service/Utility District; however, any subsequent owner could then file an application with the Planning and Zoning Commission for a zone change.

Regarding question #3, Mr. Branse explained that trails were specifically mentioned as permitted. Ms. Malanca informed the Commission that routine land maintenance activities would be permitted as forest management activities; maintenance of existing streets on MDC property would be permitted as maintenance of infrastructure. Mr. Pratt questioned whether the repairs in progress at Saville Dam would be permitted under these new regulations, and Mr. Branse and Ms. Malanca responded affirmatively.

Regarding question #4, Mr. Branse stated that the term "use" was clearly defined in Section 2.2 of the Zoning Regulations. Lastly, in regard to question #5, Mr. Branse explained that he, Mr. Connor, and Ms. Malanca had put into the list of permitted uses everything that MDC and RRDD #1 had stated that they needed. If MDC or RRDD #1 later determined that they wanted to do something not specifically mentioned in this regulation, they then had the option of apply for a special exception permit for that activity. Ms. Malanca concurred with Mr. Branse, noting that they had decided to list everything specified by both MDC and RRDD #1 as permitted because they believed that these uses were reasonable in the PS/UD Zone.

Hearing no further comments from the Commission, Mr. Steadman then opened the floor to public comment.

Maria Moore, 104 Town Hill Road, addressed the Commission. Ms. Moore asked for clarification regarding what was permitted in this version of Section 5.6 versus earlier versions discussed by the Commission. Mr. Branse then explained the differences between earlier versions of Section 5.6 and the current version under discussion. Ms. Moore then read from Section 7.2 of the MDC charter regarding the right to use the West Branch of the Farmington River. She asked, if MDC property was subsequently zoned PS/UD whether this regulation would help or hinder the MDC's efforts to use the West Branch of the Farmington River. Mr. Branse explained that transport of water is within the function of the MDC. Depending on various factors like size, new construction versus addition to existing, and whether the activity was an accessory or principal use, either a zoning permit or site plan review would be required. Ms. Malanca pointed out that MDC property was currently zoned residential; public utility facilities in residential zones were currently only required to obtain a zoning permit. Mr. Branse concurred, explaining that now the Planning and Zoning Commission would have the opportunity to see the plans for a new building via site plan review.

Mr. Krimmel questioned whether the Commission could hold a public hearing during the site plan review process. Mr. Branse explained that a public hearing was not required for site plan review; however, the Commission could hold a public hearing if they so chose. He cautioned that the Commission should be aware of the required timeframe for all site plan review applications. Mr. Krimmel noted that many of these properties abutted residential areas and he questioned how the Commission could protect those neighboring properties. Mr. Branse stated that the numbers listed in the proposed regulations for the size of buildings requiring zoning permits versus site plan review could be changed by the Commission if they so chose. He said that the Board could still regulate landscaping, lighting, and buffering as a part of site plan review; for instance, the Commission could require noise berms if they deemed them necessary. Ms. Malanca expressed the view that the proposed regulations provided more protection to abutting

neighbors than the current regulations did. She noted that solar panels were currently allowed by zoning permit in residential areas as accessory structures; however, under the new regulations, solar panels would be subject to site plan review.

Mr. Krimmel questioned whether placement of any property within the Public Service/Utility Zone would restrict the value of the property. Mr. Branse stated that this is true of all land, regardless of zone. Ms. Malanca provided the example that the MDC property had been included as open space for the most recent Plan of Conservation and Development. However, their property was currently zoned residential; if the MDC ultimately decided to build a subdivision on one of their properties, under the current zoning they would be able to do so. Since the possibility of development on these lands had not been taken into account in the Plan of Conservation and Development, such development could potentially have great impact on the Town. Ms. Malanca explained that once these properties were zoned Public Service/Utility District, if the property owners decided to try to use them for residential, commercial, or other purposes it would require a zone change, at which time the Commission could then consider the potential impact to the Town.

Hearing no further comments from the public or the Commission:

MOTION Mr. Stoutenberg, second Mr. Pratt, to close the public hearing in the matter of **Text Amendment to Section 5.6 “Public Service/Utility District” of the Town of New Hartford Zoning Regulations**; unanimously approved.

2. **PUBLIC HEARINGS CONTINUED:**

A. **WFL Properties, Inc., owner/applicant, 81 Winchester Road – Special Exception per Section 3.5F of the Town of New Hartford Zoning Regulations for a Shared Driveway. (*Opened 7/24/13 and Continued to 10/9/13 at Applicant’s Request*).**

Ms. Malanca explained that the public hearing had been opened on July 24, 2013 and then received a letter requesting the public hearing be continued to September 11th; however, she had recently received another letter from the applicant requesting the public hearing be continued to the October 9, 2013 regular meeting. She explained that this application was still before the Inland Wetlands Commission (IWC), and the Planning and Zoning Commission was required to have a report from the IWC before acting on this matter.

MOTION Mr. Stoutenberg, second Mr. Krimmel, to continue the public hearing in the matter of **WFL Properties, Inc., owner/applicant, 81 Winchester Road – Special Exception per Section 3.5F of the Town of New Hartford Zoning Regulations for a Shared Driveway** to the October 9, 2013 regular meeting; unanimously approved.

B. **Zone Change from R-30 to Public Service/Utility District Zone for all Regional Refuse Disposal District #1 Properties.**

C. **Zone Change from R-2 to Public Service/Utility District Zone for all Metropolitan District Commission Properties.**

The Commission agreed to discuss both 2B and 2C together. Mr. Krimmel questioned whether the abutting neighbors for MDC and RRDD #1 property had been notified. Ms. Malanca responded negatively, stating that the both the Town’s Zoning Regulations and State statutes did not require this; Ms. Sefcik explained that there were approximately 150 abutting neighbors to all the MDC and RRDD#1 properties. Members of the Commission then discussed the use of RRDD #1 land as transfer station versus landfill. They also discussed the possible use of solar panels at the site. Ms. Malanca explained that RRDD #1 could sell excess power back to the grid, which would potentially decrease costs to member municipalities.

Mr. Stoutenberg stated for the record that he had listened to the recording of the May 8, 2013 regular meeting where the public hearing on both of these applications had been opened.

Mr. Steadman opened the floor to public comment on either application; however, no one present expressed a desire to speak.

MOTION Mr. Stoutenberg, second Mr. Krimmel, to close the public hearing in the matter of **Zone Change from R-30 to Public Service/Utility District Zone for all Regional Refuse Disposal District #1 Properties**; unanimously approved.

MOTION Mr. Stoutenberg, second Mr. Krimmel, to close the public hearing in the matter of **Zone Change from R-2 to Public Service/Utility District Zone for all Metropolitan District Commission Properties**; unanimously approved.

3. **PENDING APPLICATIONS:**

- A. **WFL Properties, Inc., owner/applicant, 81 Winchester Road – Special Exception per Section 3.5F of the Town of New Hartford Zoning Regulations for a Shared Driveway. (Opened 7/24/13 and Continued to 10/9/13 at Applicant's Request).**

The Commission agreed to table this matter to the October 9, 2013 regular meeting.

- B. **Andrea Dobrozensky, 48 Gibson Lane – Special Exception per Section 3.6C of the Town of New Hartford Zoning Regulations for an Accessory Apartment.**

MOTION Mr. Krimmel, second Mr. Pratt, to approve the application in the matter of **Andrea Dobrozensky, 48 Gibson Lane – Special Exception per Section 3.6C of the Town of New Hartford Zoning Regulations for an Accessory Apartment** as per all oral and written testimony; unanimously approved.

- C. **Text Amendment to Section 5.6 “Public Service/Utility District” of the Town of New Hartford Zoning Regulations.**

MOTION Mr. Stoutenberg, second Mr. Pratt, to adopt **Text Amendment to Section 5.6 “Public Service/Utility District” of the Town of New Hartford Zoning Regulations** as per the memorandum dated July 15, 2013 from Martin Connor, AICP, with an effective date of September 23, 2013 finding that it is consistent with the Plan of Conservation and Development; unanimously approved.

- D. **Zone Change from R-30 to Public Service/Utility District Zone for all Regional Refuse Disposal District #1 Properties.**

MOTION Mr. Stoutenberg, second Mr. Pratt, to adopt **Zone Change from R-30 to Public Service/Utility District Zone for all Regional Refuse Disposal District #1 Properties** with an effective date of September 23, 2013, finding that it is consistent with the Plan of Conservation and Development; unanimously approved.

- E. **Zone Change from R-2 to Public Service/Utility District Zone for all Metropolitan District Commission Properties.**

Mr. Stoutenberg questioned whether all of the MDC properties were in fact currently in the R-2 Zone. Staff reviewed the property cards for all MDC properties and found that every property was listed as being located in the R-2 Zone. Mr. Branse stated that the legal noticing was correctly done given that it matched the Assessor's information. He recommended, for clarity, that any motion being made on this matter state that the Zone Change was from the current zone to PS/UD.

MOTION Mr. Stoutenberg, second Mr. Pratt, to adopt **Zone Change from the Current Zone to Public Service/Utility District Zone for all Metropolitan District Commission Properties** with an effective date of September 23, 2013, finding that it is consistent with the Plan of Conservation and Development; unanimously approved.

4. **NEW APPLICATIONS:**

- A. **Julie Harwood, 19 Robbins Road – Special Exception per Section 3.6C for an Accessory Dwelling Unit.**

MOTION Mr. Steadman, second Mr. Stoutenberg, to accept the application in the matter of **Julie Harwood, 19 Robbins Road – Special Exception per Section 3.6C for an Accessory Dwelling Unit** and to schedule a public hearing for October 9, 2013; unanimously approved.

- B. Lisa Cushman, 88 Indian Meadow Road – Special Exception per Section 3.6E for a Home Occupation (Private Psychotherapy, Counseling, and Life Coach Practice).**

MOTION Mr. Steadman, second Mr. Stoutenberg, to accept the application in the matter of **Lisa Cushman, 88 Indian Meadow Road – Special Exception per Section 3.6E for a Home Occupation (Private Psychotherapy, Counseling, and Life Coach Practice)** and to schedule a public hearing for October 9, 2013; unanimously approved.

5. APPROVAL OF MINUTES:

- A. July 24, 2013 regular meeting.**

MOTION Mr. Steadman, second Mr. Krimmel, to accept the minutes of the July 24, 2013 regular meeting as written; unanimously approved.

6. ZONING ENFORCEMENT OFFICER'S REPORT:

Ms. Malanca advised the Commission that Martin Connor, AICP, the Town's Planning Consultant, would be attending the September 25, 2013 regular meeting in order to discuss his work on the Incentive Housing Zone grant application; he would also be available to address any questions the Commission might have regarding their work in reviewing the Plan of Conservation and Development. Members of the Commission agreed that they wanted to have Mr. Connor do all necessary work regarding demographic information.

Mr. Steadman stated he had been approached by a Town resident regarding growing medical marijuana in Town. He questioned how such an application would be handled by the Commission. Ms. Malanca noted that the State had issued 3 permits thus far for this enterprise; however, she explained that the Town's regulations did not currently allow this use. Mr. Branse explained that while outdoor growing of medical marijuana would be allowed in Town, the climate of our area was not suitable for this. He informed the Commission that most medical marijuana was grown indoors, which was not currently permitted in the regulations. Mr. Branse suggested that old mills and other industrial areas might be suitable locations for this type of use.

7. CORRESPONDENCE:

No business was discussed.

8. OTHER BUSINESS PROPER TO COME BEFORE THE COMMISSION:

No business was discussed.

MOTION Mr. Stoutenberg, second Mr. Krimmel, to adjourn at 8:38PM; unanimously approved.

**Respectfully submitted,
Stacey M. Sefcik
Recording Secretary**