

TOWN OF FRANKLIN
PLANNING & ZONING COMMISSION (PZC)
FRANKLIN TOWN HALL
7 Meetinghouse Hill Rd.

AGENDA
REGULAR MEETING & PUBLIC HEARING
Tuesday, October 20, 2020, 7:30 p.m.

Join Zoom Meeting

<https://us02web.zoom.us/j/88920213461?pwd=RVVlK2E1Ri9kQjBoK2RFUTBXQ2p6dz09>

Meeting ID: 889 2021 3461

Passcode: 478024

Dial by your Phone & Location:

+1 929 205 6099 US (New York)

Meeting ID: 889 2021 3461

Passcode: 478024

Find your local number: <https://us02web.zoom.us/u/kbfDZj67dF>

1. Call to Order:
2. Recognition of Visitors:
3. Public Hearing:
 - a. **PZC #20-02 Windham Materials: New Commercial Site Plan, Special Exception:** Five (5) Year Renewal Request for property located on 949 Route 32 & Pleasure Hill Rd., Map 4, Lot 2, & Map 1, Lots 13, 14, 15, & 16, Zoned R-120; Existing Use is active earth excavation.
4. Additions to the Agenda:
5. Approval of Minutes:
 - a. September 15, 2020
6. Report of the Zoning Enforcement Officer:
7. Correspondence/Commission Matters:
 - a. State of CT Department of Transportation - Single Family Lot Development - Route 87
 - b. CT Federation of Planning & Zoning Agencies Quarterly Newsletters
8. Report of Building Official:
9. Report of Wetlands Official:
10. Unfinished Business:
 - a. **PZC #20-02 Windham Materials: New Commercial Site Plan, Special Exception:** Five (5) Year Renewal Request for property located on 949 Route 32 & Pleasure Hill Rd., Map 4, Lot 2, & Map 1, Lots 13, 14, 15, & 16, Zoned R-120; Existing Use is active earth excavation.
 - b. Affordable Housing Plan Preparations
11. New Business:
 - a. Update: Franklin Hills Estates & Country Golf Course:
12. Public Comment:
13. Adjournment:

John McGuire, Chairman

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TOWN OF FRANKLIN

7 Meetinghouse Hill Rd., Franklin, CT 06254

PLANNING & ZONING COMMISSION APPLICATION

APPLICATION NO. #20-02 (Assigned by Admin upon receipt of application fees) DATE: 9.15.20

TOTAL APPLICATION FEES PAID \$ 870.00 (all "fees" determined by Zoning Enforcement Officer (see below)

APPLICANT: Windham Materials LLC APPLICANT STATUS (circle): OWNER / AGENT OF OWNER / POTENTIAL BUYER

ADDRESS OF APPLICANT: P.O. Box 346, Willimantic, CT 06226

E-MAIL ADDRESS OF APPLICANT: hhopkins@bce-wm.com TELEPHONE NO.: 860-456-4111

PROPERTY LOCATION: 949 Route 32 + Pleasure Hill Road + Route 32

Map 4 Lot 2 + Map 1 Lots 13, 14, 15, 16 & 17
ASSESSOR'S MAP# LOT# ZONE DISTRICT: R-120

PROPERTY OWNER: Franklin Nasin LLC

ADDRESS OF PROPERTY OWNER 567 Vauxhall St. Ext. Suite 330, Waterford, CT 06385

E-MAIL ADDRESS OF OWNER: jboucher@towneengineeringinc.com TELEPHONE NO.: 860-423-6371

EXISTING USE OF PROPERTY: Active earth excavation

DESCRIPTION OF PROPOSED ACTIVITY: 5 year renewal of excavation permit originally approved on November 17, 2015 (PZC 15-09)

Renewed PZC 16-06, PZC 17-10, PZC 18-08; PZC 19-05 (expires October 31, 2020)

QUESTIONS

- 1. IS PROPERTY LOCATED W/ 500 FT OF ADJOINING MUNICIPALITY? Yes TOWNS: Windham & Lebanon
2. DOES YOUR ACTIVITY (DEFINED BELOW) REQUIRE CONTACTING ADJUTING PROPERTY OWNERS WITHIN 500 FEET? Yes
3. ARE ALL PROPERTY TAXES PAID TO DATE ON THIS PROPERTY?: Yes (GL 2019 pending)

ACTIVITY & FEES

THE TOWN OF FRANKLIN RECOMMENDS APPLICANT REQUEST PRE-APPLICATION MEETING

- Pre-application Meeting with Town Staff (Town Planner and Town Engineer or Zoning Enforcement Officer) \$100 per hour (1st hour no charge)
Public Hearing: (may be required and determined at a later date) \$250 N/A COVID-19 (WEBSITE) EXECUTIVE ORDER
Zone Change Request: \$425 (includes public hearing)
Regulation / Text Change Request: \$425 (includes public hearing)
New Subdivision Plans, without roads, plus Public Hearing \$200 per proposed lot
Re-Subdivision Plans, without roads, plus Public Hearing \$200 per proposed lot
New Subdivision Plans, with new roads, plus Public Hearing \$200 per proposed lot + \$2.00 per linear foot of road
Revised Subdivision Plans, with new roads, plus Public Hearing \$200 per proposed lot + \$2.00 per linear foot of road
Revised Subdivision Plans and/or Re-Subdivision with Public Improvements, with or without roads * \$200 per lot
New Commercial Site Plan, Special Permit, or Special \$500 + \$100 per page (3 PAGES) = \$800.00
New Residential Site Plan, Special Permit or Special \$100 per page
Revised Commercial Site Plan, Special Permit or Special \$100 per page
Revised Residential site Plan, Special Permit or Special \$100 per page
Renewals or Extensions (not requiring plan review): \$25

ADD Town Administrative fee \$ 10.00 With Application

TOWN APPLICATION FEE \$ 810.00

ADD State Administrative fee \$ 60.00 With Application

TOTAL APPLICATION FEE \$ 870.00 (enter "TOTAL FEES PAID" at top of page) OVER ->

NOTES TO APPLICANT

1. Provide **SIX (6)** copies of application & supporting materials (including site plans)
2. Provide **COMPLETED** site plan checklist (attached)
3. Send PDF FILES of "**FINAL**" approved plans to: franklinzeo@99main.com & franlinlanduse@99main.com
4. Approval of this application by the Planning & Zoning Commission indicates approval of the site plan **ONLY** and does not act as permission to proceed with construction. The Applicant must first obtain a Zoning Permit from the Zoning Enforcement Officer followed by a building permit from the Building Inspector **PRIOR** to the start of any construction.
5. Applicant is required to **FILE/RECORD** the approved Site Plan (Mylar) with the Town Clerk's Office within 90 days after the expiration of the appeal period.

PER TOWN ORDINANCE FOR PROCESSING APPLICATIONS - Administrative Staff Fees:

Cost to Review: In the event the cost to review, evaluate, and process an application/site plans exceeds applicable fees set forth in the Town of Franklin Fee Ordinance, the applicant shall pay all reasonable additional costs incurred by the Town upon notification of such additional costs. Until additional costs are paid, the Town or agency or officer, thereof, may withhold the issuance of permits, the endorsement of maps or plans, and/or the release of any bond held.

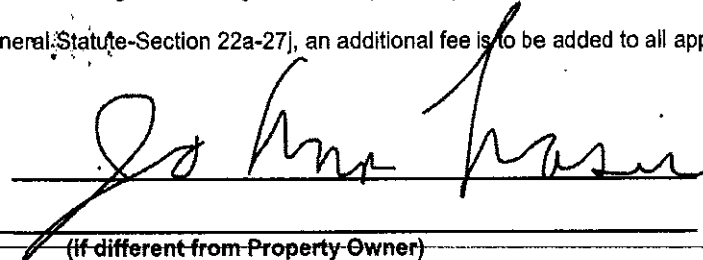
Checks: Payable to "The Town of Franklin": ***APPLICATION FEES ARE NON-REFUNDABLE*** (Includes State, Town, & App Fees)

PER TOWN ORDINANCE FOR PROCESSING APPLICATION - Advertising & Consulting Fees:

Advertising: The Town reserves the right to charge the applicant for advertising costs where the costs exceed the application fee that is normally used to pay for advertising.

Consulting Services - (Site Inspections/E&S/Drainage Etc): In accordance with the Town of Franklin Fee Ordinance on Processing Applications where it has been determined by the Agent or Commission that it must consult with experts to analyze, review, and report on areas requiring a detailed, technical peer review in order to assist the Agent or Commission in evaluating the effect of a proposal on the Town, the Agent or Commission may require the Applicant pay these costs. These fees will be paid to the Town for the Agent or Commission's use prior to proceeding on the application based on a preliminary estimate from such experts, multiplied by 150%. Upon completion of technical review & a full accounting of the charges owed or paid, any excess funds will be refunded to the applicant.

***STATE FEES:** Per Connecticut General Statute-Section 22a-27, an additional fee is to be added to all application fees for the Environmental Quality Fund.

PROPERTY OWNER SIGNATURE:  Date: 9/29

APPLICANT SIGNATURE: _____ Date: _____
 (if different from Property Owner)

[COMMISSION USE ONLY]

Date of Commission Receipt: 9.13.20 Hearing Required: YES / NO Hearing Start Date: 10.20.20

Date of Commission's Action: _____ **APPROVED / DENIED**

Conditions of Approval, if any: _____

Reason for Denial: _____

Supplemental Application Materials
Excavation Permit Extension
Special Permit (5 year renewal)
Windham Materials

Map 4 Lot 2 & Map 1 Lots 13, 14, 15, 16 & 17

Section IV

August 1, 2020

Section IV Permit History:

- Approved November 17, 2015 (PZC 15-09)
- Annual renewal October 18, 2016 (PZC 16-06)
- Annual renewal October 17, 2017 (PZC 17-10)
- Annual renewal October 16, 2018 (PZC 18-08)
- Annual renewal October 15, 2019 (PZC 19-05)

Property Permit History:

Excavation on this property was approved on December 17th, 2002 as Section I and was officially closed out by the PZC in July of 2008.

Section II Phases 1 through 5 was approved by the PZC on February 21, 2006. The Section II permit for Phases 1 through 5 was renewed by the PZC in July of 2008. Section II Phase VI was approved by the PZC on December 16, 2008. All phases of Section II have been fully closed.

Section III was laid out in 7 Phases and was approved (PZC 09-09) on October 26, 2009 and was closed by a vote of the Commission on October 17, 2017.

Section IV was laid out in 6 Phases and was approved (PZC 15-09) on November 17, 2015 and is by estimation 85% complete.

Activity Proposed:

Applicant: Windham Materials, LLC
Property Owner: Franklin Nasin, LLC
Location: Map 4 Lot 2 & Map 1 Lots 13, 14, 15, 16 & 17
Zoning District: R-120
Area of proposed excavation: 36.0 acres
Estimated Volume to be excavated: 846,500 cubic yards
(This is the original pre-excavation volume)

This application is a renewal of the application that was approved in 2015 (PZC 15-09) and which requires a Public Hearing in accordance with Section 10.4.F.a of the Franklin Zoning Regulations for further extensions.

Franklin Nasin, LLC
500' Abutters
Section IV

Parcels 2-1 & 2-2

Jon & Theresa Young
6 Forge Lane
Franklin, CT 06254

Parcel 5-1

Osgood Whitfield
283 Dayton Road
Glastonbury, CT 06073

Parcel 5-2

Town of Sprague
P.O. Box 162
Baltic, CT 06330

Section IV was approved by the PZC on November 17, 2015 (PZC 15-09) and contained 36 acres in 6 phases with a total excavation volume of 846,500 cubic yards. Section IV is approximately 85% complete.

Restoration activities are ongoing in the completed areas of Section IV.

Traffic and Pedestrian Safety (Section 10.2.1):

In 2002, during the Application process for Section I, a detailed traffic study was prepared and testimony was provided to the Commission by David Spear, PE of DLS Traffic Engineering. Mr. Spear at that time indicated that it was his professional opinion that the proposed excavation activity would not create a traffic nuisance. In 2006, Mr. Spear updated his traffic analysis and we submitted to the Commission a supplemental report indicating that during the period of operations to that date that no traffic nuisance had arisen for the ongoing excavation activities.

Since the current Application for Section IV is a continuation of the activities previously permitted and there is no proposed increase in intensity of operations proposed and from our frequent observations of the traffic entering and leaving the site we have not noted, observed, or been made aware of any traffic issues; no additional investigation of this issue is proposed for this current Application.

Attached is data from the Connecticut Crash Data Repository for the period from **2015 to the present** for reported traffic incidents within 500 feet of the Mushroom Farm driveway intersection with Route 32. In that period there are 4 incidents reported in this area. Three are passenger type vehicle accidents and the fourth appears to be an incident where an object (stone?) came off of a trailer dump and struck the windshield of a car.

It should be noted that when Section I was permitted in 2002, the Mushroom Farm was in full production and now that element of the local traffic has been removed from the equation although there is now some limited activity with Pare Electric using a portion of the main Mushroom Farm building and Shrubbucket now operating out of the Spawn Plant.

Surrounding Property Values: (Section 10.2.2):

Likewise to the traffic issues, in 2002 testimony was presented to the Commission by Leslie Lewis, a Real Estate Consultant, indicating that the excavation would not have a negative effect on the property values of the surrounding properties. The former Franklin Farms, LLC property which is currently owned by K-Best USA is also partially being excavated under a permit granted by this Commission, the main mushroom plant area is being used as a material storage area by Pare

Electric and now has Shrubbucket operating out of the Spawn Plant. We would therefore postulate that the conclusions reached by Mr. Lewis in 2002 remain applicable.

Environmental Quality: (Section 10.2.3):

The proposed excavation is designed in a down cutting fashion as have the other sections and phases of this excavation and as a result there is no stormwater discharge occurring from the excavation area.

During our inspections of the area in **Section IV** no evidence of archaeological or cultural resources were observed prior to commencing excavation operations.

The completed and restored Sections I, II, and III have returned to grass lands and have been slow to naturally reforest although the first section is beginning to return to forest. These grass lands provide great habitat for a variety of animal and bird species.

There are no areas shown to contain any state or federally listed species as shown on the current DEEP Mapping (please see attached).

Development Potential of Surrounding Properties (Section 10.2.4):

Section IV is isolated and will have no impact on the development potential of any surrounding properties.

Public Utilities and Storm Water Drainage (Section 10.2.5):

No public utilities are necessary for the activities proposed under this application. The infrastructure necessary for this application including the access road and truck scale facilities are currently in place and in use. The access road across the K-Best property is well maintained. The site is gated and the gate is locked at the end of each day's operations.

The down cutting design of the excavation will contain the storm water fully within the excavation area where it will recharge into the undisturbed soil horizons which will remain.

Impact on Appropriate Use of Adjoining Properties (Section 10.2.6):

The Application area is a remote location with no impacts of the use of adjoining properties.

Bonding:

The original approval (PZC 15-09) and the subsequent renewals required a \$40,000.00 commercial surety bond which is valid to February 4, 2021 and an additional pass book account which when initially posted in 2002 or 2003 had an initial deposit of \$4000.00 that currently has a balance of \$4077.02.

Waiver Request:

This application is in effect a renewal of the project and plan set approved by the PZC on November 17, 2015 (PZC #15-09). No changes to the proposed plans are being proposed. The plans submitted for this application omit the 40 scale grading plans but include the 100 scale grading plan, the notes and detail sheet, and a mark-up (sheet 1 of 3) which depicts the existing conditions.

Conditions of Approval:

The following conditions of approval are offered for your consideration. These conditions of approval are essentially the same as were set by the PZC for Sections III and Section IV.

1. *That the current commercial surety bond held by the Town in the amount of \$40,000.00 remain in place to ensure compliance with the approved site plan.*
2. *That the additional 10% or \$4000.00 (plus accrued interest) remain posted with the Town in a pass book savings account held by the Town for any Erosion and Sedimentation issues that occur as the result of the proposed activity.*
3. *The maximum excavation depth permitted be no more than one foot below the final proposed level.*
4. *No topsoil shall be removed from the property until the entire section has been fully graded and restored in accordance with the approved plans.*

**TOWN OF FRANKLIN
PLANNING & ZONING COMMISSION (PZC)
FRANKLIN TOWN HALL
7 Meetinghouse Hill Rd.**

MINUTES

**REGULAR MEETING
September 15, 2020 7:30 p.m.**

1. Call to Order: Chairman McGuire called the meeting to order at 7:30 p.m.

Members Present: Secretary Matt Calvert, Chairman John McGuire III, Pat Osten & James Wheeler.

Members Absent: Peter Ballaro

Alternate Members Absent: Leo Bienvenue, Patrick McCarthy, Don McClure.

Also Present: Ron Chalecki, Zoning Enforcement Officer, Charlie Grant, First Selectman, Carly Myers, SECCOG, Town Planner.

2. Recognition of Visitors: Joe Boucher, Towne Engineering & Harold Hopkins, Windham Materials, representing Application PZC #20-02.

3. Additions to the Agenda: NONE.

4. Approval of Minutes:

- a. May 19, 2020:

MOTION #1 (09.15.20): made by John McGuire SECONDED BY Patty Osten that the Planning & Zoning Commission approve meeting minutes of May 19, 2020– as amended:

1. Agenda Item 6b., first sentence, CHANGE Leonard Engineering to Towne Engineering

VOICE VOTE: UNANIMOUS;

MOTION CARRIES

5. Report of the Zoning Enforcement Officer:

- a. **DAVE WADDINGTON 140 ROUTE 32:** Current use on this property consists of services for trucking, disposal, inventory storage, and regional and long-haul operations. It is anticipated Goodyear Tire is interested in leasing space in this building for activities associated to commercial tire sales, tire mounting, and tire maintenance related services.

Mr. Chalecki informed the Commission that this building is not ready to be occupied by Goodyear Tire. Mr. Waddington would need to obtain approval for a new sprinkler system from the Town of Franklin Fire Marshall and also a “change of use” permit approved by the Zoning Enforcement Officer and signed off by the Chairman of the Planning & Zoning Commission.

6. Correspondence/Commission Matters:

Affordable Housing Plan Preparations: Carly Holzschuh was present to provide an overview of recent activities. The Southeast Council of Governments is coordinating a State of Connecticut funded mandate to create an Affordable Housing Plan in the region. Locally, the towns of Franklin, Bozrah, and Salem are beginning the process of developing their plans.

Mrs. Holzschuh provided a Draft Affordable Housing Survey for review and discussion. PZC members were asked are to review the survey and offer comments and suggestions at the October meeting. Members should also consider options on how to best provide the survey to Franklin residents. The Affordable Housing Plan will be incorporated into the Plan of Conservation & Development at its next update.

a. **State of CT Department of Transportation - Single Family Lot Development - Route 87:**

The Commission received correspondence from the Department of Transportation, dated August 27, 2020, for a single-family lot development for Gardner on Route 87 and the associated encroachment permit. Generally, the letter indicated additional information is needed before a decision can be rendered.

b. **Sec. 8-24. Municipal Improvements: Murphy Road Widening & Intersection Improvements:**

Joe Boucher spoke on behalf Towne Engineering and provided an overview of activities associated to this project. Because this is a Town of Franklin municipal project associated to improving the roadway, CT State Statute Sec. 8-24 requires an endorsement from the local planning commission.

MOTION # (09.15.20): made by Jim Wheeler SECONDED BY Patty Osten that the Planning & Zoning Commission endorse the CT State Statute Sec. 8-24. Municipal Improvements associated to the Town of Franklin Murphy Road Widening & Intersection Improvements Project

VOICE VOTE: UNANIMOUS;

MOTION CARRIES

7. Report of Building Official: N/A

8. Report of Wetlands Official:

Carly Holzschuh reported on recent activities of IWWC. At their last meeting IWWC approved site plans for the Franklin Murphy Road Widening project, and Karl Margolis for restoration of disturbed area at the bank of Beaver Brook with conditions.

9. Unfinished Business: N/A

10. New Business:

- a. **PZC #20-02 Windham Materials: New Commercial Site Plan, Special Exception:** Five (5) Year Renewal Request for property located on 949 Route 32 & Pleasure Hill Rd., Map 4, Lot 2, & Map 1, Lots 13, 14, 15, & 16, Zoned R-120; Existing Use is active earth excavation.

APPLICANT / PRESENTATION: Joe Boucher, Towne Engineering, was present and gave a brief history of this project. He submitted a comprehensive history timeline, description of proposed activities, traffic & pedestrian safety, surrounding property values, environmental quality, public utilities & stormwater drainage, impact on appropriate use of adjoining properties, bonding, and conditions of approval for Section VI. Site Plans dated August 1, 2020 were submitted into the record.

MOTION # (09.15.20): made by Jim Wheeler SECONDED BY Patty Osten that the Planning & Zoning Commission schedule a Public Hearing for PZC #20-02 Windham Materials, 5-Year renewal for October 20, 2020, 7:30 p.m.

VOICE VOTE: UNANIMOUS;

MOTION CARRIES

b. Update: Franklin Hills Estates & Country Golf Course:

Ron Chalecki recommended Town Staff hold a meeting to discuss topics related to Franklin Hills Estates & Country Club. Discussion should cover update on current conditions of site, erosion and sedimentation controls, drainage site reports by professional engineers, and project accounts.

11. Public Comment: N/A

12. Adjournment:

MOTION # (09.15.20): made by Jim Wheeler SECONDED BY Patty Osten that the Planning & Zoning Commission adjourn at 8:23 p.m.

VOICE VOTE: UNANIMOUS;

MOTION CARRIES

Respectfully Submitted,
Sherry Pollard,
Land Use Administrative Assistant



STATE OF CONNECTICUT

DEPARTMENT OF TRANSPORTATION

DISTRICT II

171 Salem Turnpike

Norwich, Connecticut 06360

Phone:



September 17, 2020

Mr. Brandon Handfield, P.E.
Yantic River Consultants, LLC
191 Norwich Avenue
Lebanon, CT 06249

Dear Mr. Handfield:

Subject: Single Family Lot Development for Gardner
Route 87
Town of Franklin

This office approves the submitted plans entitled, "Single Family Lot Development for Gardner -- Route 87-- Franklin, Connecticut" dated June 16, 2020, and last revised August 31, 2020. We find the proposal acceptable with no further comments at this time. However, your submittal/application to work within the State right of way or perform work that may affect State property is denied based on the following:

1. Proof of Town approval must be submitted.

As regulated by Connecticut General Statute 13b-17, no work is to commence within the State right of way without first obtaining a DOT encroachment permit. In order to obtain the required encroachment permit, the following documents must be provided:

- Proof of town approval.
- Two complete sets of the latest town-approved plans (40 scale or larger).
- A completed encroachment permit application (State Form PMT-1 Rev. 5/91).
- A Bond on State Form CLA-5 in the amount of \$10,000 in the owner or developer's name.
- Proof of minimum insurance requirements (General Liability of \$1,000,000 and Aggregate of \$2,000,000). Insurance may be carried by the contractor.
- A check or money order in the amount of \$45 payable to "Treasurer -- State of Connecticut."

These forms, along with additional information, may be obtained at www.ct.gov/dot.

If you have any questions in regard to this matter, please contact Mr. Daniel McBride of this office at (860) 823-3114, or by email at Daniel.McBride@ct.gov.

Sincerely,

Andrew S. Morrill
Special Services Section Manager
Bureau of Highway Operations

cc: Franklin Planning and Zoning

CONNECTICUT FEDERATION OF PLANNING AND ZONING AGENCIES QUARTERLY NEWSLETTER

Spring 2020

Volume XXIV, Issue 2

NONCOMPLIANCE WITH REGULATIONS DOES NOT ALWAYS JUSTIFY DENIAL OF AFFORDABLE HOUSING

An affordable housing application to build 105 single family homes on a 17-acre parcel of land was denied by the commission due to various concerns over stormwater drainage. The commission's experts determined that the application, as submitted, failed to meet several standards in the zoning regulations regarding drainage. A revised application which sought to address these shortcomings was also denied. The matter ended up before the State Appellate Court which ruled in favor of the developer and reversed the decision of the commission.

A commission should remember that in denying an affordable housing application, it is not enough to find that the application does not comply with the zoning regulations. The commission must also show that compliance with the zoning regulations is necessary to protect the public interest and that the public interest involved clearly outweighs the need for affordable housing in the town.

In this case, while there may have been some minor compliance issues in regard to the regulations for stormwater drainage, the evidence in the record showed that the applicant's engineer and the commission's engineer had worked together to address the

commission's concerns. The court found there was no evidence in the record that this plan would not protect the public interest. *Autumn View LLC v. Planning & Zoning Commission*, 193 Conn. App. 18 (2019).

WETLANDS APPLICATION CANNOT BE DENIED SOLELY ON IMPACTS TO UPLAND REVIEW AREA

An owner of a 3-acre parcel of property sought to construct 7 single family homes on it. A previous plan to construct an 11-unit condominium on this same parcel had been approved but not built. While there were no wetlands or watercourses on the property, a drainage ditch on an abutting property placed a portion of the subject lot within the upland review area. A petition was filed with the commission requesting that a public hearing be held.

[CONT. ON NEXT PAGE]

CONFERENCE CANCELLED

The Federation has cancelled its Annual Conference for April 30, 2020 at the Aqua Turf Country Club in Plantsville CT. An insert is included with this newsletter explaining the cancellation and the refunding of any checks. Information on the cancellation can also be found on the Federation's website www.cfpza.org.

Written and Edited by
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CONNECTICUT FEDERATION OF PLANNING AND ZONING AGENCIES QUARTERLY NEWSLETTER

Spring 2020

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At the hearing, testimony from the town's conservation officer was received. She testified that the new proposal would involve a greater disturbance within the upland review area and that the prior approval was a feasible and prudent alternative to the proposed 7 home plan.

The commission denied the application based largely upon the conservation officer's testimony. On appeal, the court found that this evidence was not sufficient to sustain the denial. In making its ruling, the court stated that in deciding an application, a municipal wetlands agency's fundamental purpose is to decide whether the proposed activity will have an adverse impact on a wetlands or watercourse. In this case, the evidence only addressed the impact the proposed development would have on the upland review area. Without relevant evidence as to any effects on the neighboring drainage ditch, the Commission could not deny the application. *See Blue Bird Prestige Inc. v. Inland Wetlands & Watercourses Commission, 68 Conn. L. Rptr. 727 (2019).*

INTERPRETATION OF ZONING REGULATIONS

When interpreting a term that is not defined in the zoning regulation, a commission can rely on a common understanding of the term. This can be derived from its own, past interpretations

as well as definitions found in a dictionary as well as those found in the zoning regulations of other municipalities.

In this case, the commission was faced with the task of determining whether a landscaping contractor's business qualified as a horticultural use. While the commission thought it did, a reviewing court disagreed. The court looked not just at the dictionary definition for a horticultural use but also looked to other town's zoning regulations to find a type of use that fit the activities associated with the landscaping business. In this case, the use better approximated what is known as a contractor's yard, which was not a permitted use. *Kruk v. PZC, 69 Conn. L. Rptr. 157 (2019).*

CONDITION OF APPROVAL CAN INCLUDE FIRE PREVENTION MEASURES

Attaching as a condition of approval that a homeowner install a fire protection system was found to be a valid exercise of a zoning board of appeals' authority to grant a variance. The variance in question was to reduce certain sideyard requirements so that the applicant could construct a new dwelling on her undersized lot. A letter from the town fire marshal alerted the board to the fact that reducing separation distances between buildings can cause an increased risk to fire spreading from

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Spring 2020

Volume XXIV, Issue 2

one building to another. In order to mitigate this increased risk of fire, the fire marshal recommended that the board require a sprinkler system be installed in the new dwelling. This the board did, approving the variance to reduce the sideyard setbacks with the condition that a fire suppression sprinkler system be installed in the dwelling.

An appeal to court followed based on the argument that the board had no authority to impose a requirement not found in the zoning regulations. The court upheld the condition as it served a legitimate zoning purpose – to prevent fire hazards. It is well recognized that one purpose of sideyard requirements is to prevent the spread of fires. To offset the negative effect a reduction in sideyard requirements would have on this zoning purpose, the board was within its authority to condition its approval on the installation of fire prevention system. *See Cariati v. Board of Zoning Appeals, 68 Conn. L. Rptr. 181 (2019).*

WHAT IS A GROUP HOME

After initially receiving a zoning permit to renovate and then use a single-family home as a group home for 5 elderly adults, the owner had to defend the permit before the zoning board of appeals. A neighboring property owner had appealed the issuance of the zoning permit, claiming it allowed the property to be used as a boarding house or a

nursing home, neither of which were permitted. The zoning board agreed, and voted to revoke the permit. An appeal to court followed.

The court reversed the decision of the Board, finding that the use of the property was more like a group home for disabled persons which has been found to qualify as a single-family home so long as there are fewer than 5 residents. The court specifically looked to the level of care that would be provided to the elderly residents, which included assistance with taking medications. This level of care did not meet the standard normally provided by a nursing home but exceeded that of a bordering house. *See 7 Forest Hill Road LLC v. ZBA, 69 Conn. L. Rptr. 41 (2019).*

ANNOUNCEMENTS

Workshops

At the price of \$180.00 per session for each agency attending, our workshops are an affordable way for your board to 'stay legal'. Each workshop attendee will receive a booklet which sets forth the 'basics' as well as a booklet on good governance which covers conflict of interest and how to run a meeting and a public hearing.

ABOUT THE EDITOR

Steven Byrne is an attorney with an office in Farmington, Connecticut where he maintains a strong focus in the area of land use law

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BOOK ORDER FORM

Name of Agency: _____

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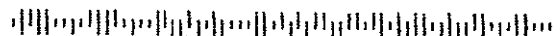
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Franklin Planning & Zoning Commission
7 Meeting House Hill Road
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North Franklin, CT 06254



CONNECTICUT FEDERATION OF PLANNING AND ZONING AGENCIES QUARTERLY NEWSLETTER

Fall 2020

Volume XXIV, Issue 4

PROPOSED CHANGES TO ZONING LAWS ENDANGER SINGLE FAMILY ZONE

A Bill was presented to the State Legislature proposing substantial revisions to Sec. 8-2 of the General Statutes. This statute is part of the enabling statutes that provide authority to municipalities to regulate land use. The purpose of the proposed amendment goes beyond the goal of providing more affordable housing. Instead, its purpose is to “replace segregated living patterns with integrated and balanced living patterns” and “foster inclusive communities based on protected characteristics”.

In order to reach these goals, this legislation proposes that certain types of multi-family housing must be regulated in the same fashion as single-family dwellings. Thus, if a single-family home requires only a zoning permit, then a four-unit apartment building must also only require a zoning permit. Furthermore, certain named types of multi-family housing, such as townhouses and triplexes, must be allowed on 10% of a municipality’s area and 50% of the area within its town center.

It is the opinion of the Federation that this proposed legislation removes the authority of a local land use agency to preserve what is known as the single-family neighborhood. Instead, the State would usurp this authority and impose in

its place a uniform statewide plan. This legislation is unnecessary as nearly all municipalities have taken steps to amend their zoning regulations so that a variety of housing choices are available to residents of this state. The proposed bill requests significant changes to how zoning authority is exercised in Connecticut and continues the uncomfortable trend of transferring power from local government and concentrating it at the state level. Federation members are encouraged to contact their state representative about this legislation.

In addition, members should also submit to www.cfpza.org any efforts they have made to improve housing diversity. The Federation can then present this to the legislature to demonstrate that this radical proposal is unnecessary.

PERSON WHO APPEALED ZONING DECISION PROTECTED FROM LAWSUIT

An eventually successful applicant that gained approval for its special exception application to construct a combined child care apartment housing complex sued an abutting property owner. This abutting property owner had opposed the various applications filed by the developer, both before the planning and zoning commission and then in court.

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In its lawsuit, the developer accused the abutting property owner of, among other things, interfering with its plans to construct its development by taking frivolous appeals to court which were bound to be unsuccessful and only served the purpose of delay and causing expense. The property owner raised the defense of what is known as the Noerr-Pennington Doctrine. This doctrine shields a person from liability for petitioning a governmental entity for redress.

The court found that this doctrine applies to an appeal of a decision by a zoning commission and that just because a favorable result was unlikely, it was not frivolous or vexatious for the appeal to be brought. *Procurement LLC v. Ahuja*, 197 Conn. App. 696 (2020).

VARIANCE CANNOT BE APPROVED IF PROPERTY HAS A REASONABLE PERMITTED USE

The owner of a shorefront residentially zoned parcel of land sought to rebuild his home which had been destroyed by Super-Storm Sandy. Due to the revised flood zone regulations issued by FEMA, the proposed replacement building would exceed the permitted building height. The owner sought a variance from the height restriction, which was denied by the zoning board of appeals. The board believed that any hardship was self-created as the proposed building

exceeded the building height limit by only 3.5 feet, which the board believed could be met by revising the building plans. An appeal to court followed.

The trial court sustained the appeal for two reasons. First, the court believed the hardship was not self-created as the increased building height was due to the revised FEMA regulations. Second, the proposed building would actually decrease an existing nonconformity in that the new building would now comply with lot coverage requirements which the destroyed building exceeded.

The trial court's ruling was then appealed to the Appellate Court, which reinstated the board's decision and dismissed the appeal. The court found that even though the revised FEMA regulations imposed a hardship on the property owner, this hardship did not prevent the property from being put to a reasonable use. A single-family home could still be built on the property, just not the one the property owner wanted. Disappointment does not provide a hardship worthy of a variance.

In its decision, the court reminds us that "A variance is not a tool of convenience, but one of necessity ... They are not to be granted when a reasonable use already is present, or plainly is possible under the regulations but an owner prefers otherwise."

In regard to the elimination of a nonconformity, the court dismissed this argument stating that the creation of a

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new nonconforming aspect to the property, in this case building height, cannot be the basis for a variance even when another nonconformity would be reduced. *Turek v. Zoning Board of Appeals*, 196 Conn. App. 122 (2020).

LOT LINE ADJUSTMENT IS NOT A SUBDIVISION

Just what constitutes a subdivision of land was answered by our State Appellate Court recently. The owner of 2 adjoining parcels of property sought to shift the boundary line shared by the parcels. One lot was 10 acres in size while the other was 15 acres. The lot line would result in a transfer of 10 acres from one lot to the other, resulting in a 20-acre lot and a 5 acres lot. When this plan was presented to the town planner, he referred it the Planning Commission for a determination as to whether it constituted a subdivision of land. Apparently, one of the existing lots had been split off from another parcel a number of years earlier.

The Commission said it was a subdivision due to the large amount of land that was transferred from one lot to the other and that there were actually 3 lots involved due to the earlier lot split. This substantial change, the commission believed, required that a subdivision application be filed. The property owner unsuccessfully appealed to the Superior Court. However, he met a more

favorable result with the Appellate Court.

The Appellate Court found that a boundary line change, no matter how large the amount of land is transferred, is not a subdivision. Instead, what constitutes a subdivision of land is clearly set forth in Connecticut General Statutes Sec. 8-18. It is the division of a parcel of land into 3 or more lots. In this case, there were 3 lots before the boundary line adjustment, and there would be only 3 lots afterward. Thus, no subdivision because there were no new lots created by the boundary line adjustment. *500 North Avenue LLC v. Planning Commission*, 199 Conn. App. 115 (2020).

ANNOUNCEMENTS

CFPZA Website

The Federation's website has been up and running for nearly 6 months. The web address is www.cfpza.org. On the website you can find educational materials published by the Federation as well as news items and Federation webinars. Please take time to visit us.

Workshops

If your land use agency recently had an influx of new members or could use a refresher course in land use law, contact us to arrange for a workshop to be held at your next meeting. At the price of \$180.00 per session for each agency attending, it is an affordable way for your commission or board to keep informed.

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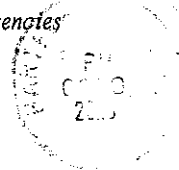
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