

SALEM PLANNING AND ZONING COMMISSION
MINUTES
October 26, 2010
7:00

Present

Amato, R
Bingham, D (arrived at 7:10)
Buckley, K
Burr, E.
Fogarty, G., Alt
Chinatti, M.-Town Planner/ZEO
McKenney, H.
Savalle, R.
Smith, V., Alt
Walter, G.

Absent

Vacancy, Alt

Guests

See attached

A. CALL TO ORDER

Chairman H. McKenney called the meeting to order at 7:07 pm.

B. ADDITIONS TO THE AGENDA

M/S/C (McKenney/Burr) to add executive session to discuss pending litigation, Kobyluck vs. the Town of Salem Planning and Zoning Commission. Vote: Approved Unanimously.

Chairman H. McKenney introduced all members and staff.

C. PUBLIC HEARING

- 1) **Proposed amendments (Substantive and Clerical) to the Salem Zoning Regulations to the following Sections: 3.5a), 3.14.7, 4.1.7, 9.1.22 (with renumbering of remaining sections), 9.1.30, 9.1.31, 9.4a., 9.4a.1., 9.4b., 11A.2.6, 11A.5.7, 14.1 DEFINITIONS (Excavation shall not include:), 14.3.1b), 14.3.1e), 25A.6.1(d)(1), Section 2 DEFINITIONS (Passive Recreation and Recreation, Passive), 3.25C., 5.2.12, 5.2.12a, 6.2.7, 6.2.8, 7.1.10, 7.1A.9, 7A.2.9, 7B.2.8, 7B.2.11, 7B.2.12, 7B.2.13, 7B.2.15, 7B.2.16, 7B.5, 7B.7, 8A.2.5, 8A.2A, 11A.5.5.,14.1 DEFINITIONS (Excavation shall not include©, 14.1 DEFINITIONS (Surplus Material), 14.6f), 15.2.10, 15.2.11, 17.2.3, and 17.2.4.**

H. McKenney explained that the Commission is the applicant for the proposed amendments. M. Chinatti will explain the proposed changes. Each change will be explained, the Commission members will be given a chance to comment, and then the public will be asked for comment.

K. Buckley read the legal notice.

H. McKenney read the response from Windom Council of Governments. (See File Copy)

G. Fogarty read the letter from Mid State Regional Planning Agency regarding the proposed amendments. (See File Copy)

G. Walter read the letter from the CT River Estuary regarding the proposed amendments. (See File Copy)

H. McKenney read the letter from the Southeastern Connecticut Council of Governments regarding the proposed amendments. (See File Copy)

M. Chinatti stated that the bulk of the proposed changes are clerical. They will clean up typos, discrepancies, formatting, etc. (See File Copy)

The following proposed amendments were presented by M. Chinatti:

AMEND Section 2 DEFINITIONS as follows:

~~Passive Recreation~~ DELETE

Recreation, Passive – Minimally intrusive *non-motorized recreational* activities that allow the land to remain essentially in its natural state, including, but not limited to, hiking, nature walks, bird watching, and horseback riding.

DELETE one Section 3.25C, as it appears twice:

3.25 COMMON DRIVEWAYS

C. Rear lots and/or lots with adequate frontage may have access from a common driveway.

~~C. Rear lots and/or lots with adequate frontage may have access from a common driveway.~~

D. The Commission shall not approve

AMEND Section 5.2 SPECIAL EXCEPTIONS as follows:

5.2.12 Common driveways in accordance with *Section 3.6.1 and* Section 3.25 of these Regulations.

~~5.2.12a~~ DELETE

AMEND Section 6.2 SPECIAL EXCEPTIONS as follows:

6.2.7 Common driveways in accordance with *Section 3.6.1 and* Section 3.25 of these Regulations.

6.2.8 DELETE

AMEND Section 7 BUSINESS ZONE as follows:

7.1.10 A private hospital or as defined in Section ~~189-73b~~ **19-73b** of the State Statutes

AMEND Section 7.1A SPECIAL EXCEPTIONS as follows:

7.1A.9 Retail establishments, *including food service establishments*, which include drive-up window service

AMEND Section 7A.2.9 PERMITTED USES to correct formatting error; first word of line 2 (requirements) should be directly beneath the first word of line 1 (Signs).

AMEND Section 7B.2 PERMITTED USES to correct formatting errors:

- Sections 7B.2.8, 7B.2.11, 7B.2.12, 7B.2.13, and 7B.2.15 are misaligned.
- Section 7B.2.16: First word of line 2 (constructed) should be directly beneath the first word of line 1 (Wireless).

AMEND Sections 7B.5 and 7B.7: Text does not line up correctly with Sections 7B.3, 7B.4, and 7B.6.

AMEND Section 8A COMMERCIAL RECREATION ZONE as follows:

8A.2.5 Wireless Telecommunication Towers, multiple antenna, and facilities not listed in Section 8A.2.3 or 8A.2.4 and in accordance with the provisions of Section 29 of these Regulations.

DELETE:

~~8A.2A SPECIAL EXCEPTIONS~~

~~The following uses may be permitted only established in Section 14 of these Regulations.~~

~~8A.2A1 Wireless Telecommunication Towers Section 29 of these Regulations.~~

AMEND Section 11A.5 SITE PLAN STANDARDS as follows:

11A.5.5 Driveways to new commercial uses in Business and Highway Commercial Zones, *and to new industrial uses in Industrial Zones*, shall be paved to a width

ADD to Section 14.1 DEFINITIONS:

Surplus Material: Earth products, including, but not limited to, topsoil, subsoil, sand, gravel, and rock, disturbed from the earth as part of an on-going construction project.

AMEND Section 14.6 DURATION OF PERMIT as follows:
14.6f) Monitoring and Inspection fee of \$10.00 per one thousand (1000) cubic yards of earth excavation ~~as part of the permit. to be removed after 9/15/08 in accordance with the approved plan with the approved plan.~~

AMEND Section 15.2 DESIGN STANDARDS as follows:
15.2.10 and 15.2.11 are incorrectly listed as 5.2.10 and 5.2.11.

AMEND Section 17.2 ISSUANCE OF ZONING PERMIT as follows:
RENUMBER second 17.2.1 to 17.2.3
RENUMBER second 17.2.2 to 17.2.4

H. McKenney asked if the Commission members or members of the Public had any questions.

B. Martin pointed out a typo in the proposed amendment Section 14.1, the phrase, *with the approved plan* was repeated twice. M. Chinatti will correct.

Substantive Changes.

H. McKenney stated that the substantive changes would be addressed by M. Chinatti one at a time with comment from members and the public after each description of proposed change.

AMEND Section 3.5 EXISTING LOTS as follows:
3.5...EXISTING LOTS

a) The provisions of these Regulations of the Town of Salem; ~~or on a lot which was shown as a lot on a subdivision or resubdivision plan approved and endorsed by the Commission and duly filed in the Salem Town Clerk's Office, provided the approval of the Commission has not expired pursuant to the provisions of Section 8-26c of the General Statutes or any amendment thereto.~~

M. Chinatti stated that this was brought to the Commissions attention in a September 2006 letter from Attorney John Casey, in which Attorney Casey pointed out some confusion/inconsistency in the regulation as it is currently written, and he recommended the subject amendment. His letter is attached. (See File Copy)

No Comments

AMEND Section 3.14.7 REAR LOTS as follows:

3.14.7 Rear lots are permitted in the HC, I and B Zones without an increase in lot size,

M. Chinatti stated this should have been in the Clerical Changes.

No Comments

Amend Section 4.1.7 as follows:

4.1.7 Public buildings, *public services and or events approved by the Board of Selectmen*, except

M. Chinatti stated this change would allow public uses on municipal property when there is no building or structure on the property.

H. McKenney stated without the change the Town could not hold any events such as farmers markets, fairs, etc. on town owned properties such as the “Gadbois Property”

No Comments

AMEND Section 9 – INDUSTRIAL ZONE as follows:

DELETE the following subsection and renumber remaining sections accordingly:

9.1.22 The manufacturing and processing of earth products: stone crushing, washing, screening, as well as processing sand, gravel, and/or stone for wholesale and retail sales, as a permitted use within this district, providing said operation shall be conducted on a lot containing at least forty (40) acres in size and also providing that the crushing machinery be at least five hundred (500) feet from any Rural or Residential Zone. (3/01/87)

M. Chinatti stated this should be in the excavation section of the regs. H. McKenney informed the members and public that the Commission had consolidated all the excavation regs in one section. This reg was omitted from the consolidation.

No Comments

ADD the following subsections to Section 9.1:

9.1.30 Industrial Park. Any Industrial Park approved per this section of the Regulations may include those uses permitted in Sections 9.1 and 9.2 of these Regulations.

9.1.31 Storage warehouses.

M. Chinatti stated that currently these uses are not permitted and that they are more than appropriate uses for an industrial zone.

No Comments

~~AMEND Section 9.4 as follows:~~

9.4 SETBACK REQUIREMENTS

a. Front Yard – No building or structure *on an existing Town road or State highway* shall be located within one hundred (100) feet from a front lot line.

1. No building or structure located in an industrial park layout on a new road, public or private, within an Industrial Zone shall be located within thirty-five (35) feet of a front lot line unless adequate buffering is provided.

b. Side Yard and Rear Yard – No building or structure shall be located within *thirty (30) feet of any side or rear lot line, except that no building or structure shall be located within* fifty (50) feet of any side or rear lot line *abutting a Residential Zone.*

M. Chinatti stated this proposed change was requested by a property owner of land within an industrial zone. She stated the property owner’s representative was present and would like to speak to the proposed change.

H. McKenney informed the members and the public that although the proposed changes was brought forward by a resident that the change was not just for that one property but the whole town where it was applicable.

Comments

Mike Bennett-415 Killingworth Rd Higganum, representing Renz, 625 Hartford Rd. M. Bennett thanked M. Chinatti for looking at the regulation and coming up with a very well worded and workable regulation proposal. He stated the proposal was a good compromise between already existing town and state roads. He stated the reduced setbacks would encourage industrial development and was more environmentally friendly due to the fact the driveway would not be as long, therefore lessening the amount of impervious surfaces. He informed the Commission that he had researched surrounding towns and most of the setbacks were 25-50 feet in a light industrial zone.

H. McKenney stated that there is still a 50 foot buffer for side lots that border a residential zone.

Arthur Winakor-Forsyth Road-asked the Commission if a request for a variance was available.

M. Chinatti told him there was. H. McKenney stated that the option of going before the Zoning Board of Appeals was available to owners.

AMEND Section 11A.2 WHEN REQUIRED as follows:

11A.2.6 At the request of requirements in Section 11A.4 and Section 11A.5 ~~for a nature preserve managed by a Land Trust~~ for proposals on lands where **publicly accessible** passive recreation is allowed.

M. Chinatti stated that the regulation as written was too specific and that any publicly accessible passive recreation should be allowed the same options as a Land Trust.

Comments

R. Amato asked who else would the change in language benefit. H. McKenney answered, "The Recreation Commission for one"

AMEND Section 11A.5 SITE PLAN STANDARDS as follows:

11A.5.7 A driveway to a rear lot in a Business, **Industrial** or Highway Commercial
.....

M. Chinatti state this proposed change should be in the clerical section because the word **Industrial**, was omitted.

No Comments

AMEND Section 14.1 – DEFINITIONS as follows:

Excavation shall not include:

1. Removal off premises of:
 - a. Less than three hundred (300) cubic yards of earth materials from a landscaping or agricultural operation, or
 - b. Removal off premises of ~~less than one hundred (100) cubic yards~~ of surplus material **resulting** from a bona fide construction project for which a site plan or subdivision plan has been approved **by the Planning and Zoning Commission, or for which a Zoning Permit has been issued by the Zoning Enforcement Officer.**

M. Chinatti explained that anyone who has come before the Commission for site plan approval for a construction project and has to excavate for a foundation, pool, driveway, etc and wants to take more than 100 cubic yards off the premises now has to come for a special exception for excavation. She stated this is very expensive and requires surveys, as-builts, etc.

Comments

V. Smith asked if anyone had calculated how much earth would be removed in a typical home construction site. M. Chinatti said they had not. G. Fogarty gave an example of the size of excavation that would generate 100 cubic yards of soil. She stated the area was quite small and if there was a large site like a commercial development much more surplus material would be generated and could possibly not be used on site.

D. Bingham pointed out the three hundred (300) yards should be a bold font due to the fact it was a change from the original one hundred (100) yards in the existing regulation. He continued, stating that section a. would allow anyone to take three hundred (300) yards of material off their lot even if there was no construction going on. He stated that Salem typically has only about three inches of topsoil which would mean that a quarter of an acre could be removed if the proposed regulation was adopted.

G. Fogarty thought the actual situations that would apply would be small.

Sue Spang-129 Hartford Road, Recreation Commission Chairperson and Multi Purpose Path Committee Chairperson, asked for clarification on what is a construction project. Was it buildings or would the path be considered a construction project? She also wanted to know if it was per lot, per site plan or the whole construction project.

H. McKenney stated the path would fall under section b of the proposed changes therefore it would not be subject to the special exception approval for an excavation.

M. Chinatti stated the path would be considered a construction project due to the fact a site plan was submitted.

D. Bingham stated that farmers do clear cut their land and remove stones.

Donald Bourdeau-Public Works Director, stated that a construction project was not defined. He stated that he has worked on plenty of sites in town that had six (6) to eight (8) inches of topsoil. He informed the Commission that Public Works has been working on the path and large piles of soil have accumulated due to the fact they can not take off more than one hundred yards of topsoil.

D. Bourdeau pointed out that the piles are unsightly and a nuisance. He stated that you can only spread so much of the topsoil out and then you are covering existing vegetation and that having eight to ten inches of topsoil is not always the best option.

William Martin-Music Vale Road, thanked the Commission for proposing part b. He stated that he just cleared trees from his fourteen acres and had three truck loads of stumps removed, are stumps considered earth materials. He stated he would like to fully cut the trees and go to agriculture; this would generate much more than three hundred cubic yards of earth materials. Would he then have to go for a special exception approval for excavation. He suggested the amount should be five hundred yards because there was no relief in the proposed regulation and the Special Exception was very expensive.

G. Walter pointed out there was no definition of earth materials.

William Martin suggested putting all definitions in one place.

Mike Bennett stated his clients, Mr. and Mrs. Renz, are in favor of the proposed change.

AMEND Section 14.3.1 PROCEDURES as follows:

- b) of an abutting residential property unless Section 14.3.1a), above, applies, ***and no processing equipment shall be located within two thousand (2000) feet of a Rural or Residential Zone.***
- e) ***No processing operation in an Industrial Zone shall be conducted on a lot that is less than forty (40) acres in size.***

M. Chinatti explained that this proposed amendment, which is contained in the current 9.1.22, should be included in Section 14 Excavations but currently is not. When the Commission discussed the proposal prior to scheduling it for public hearing, there was much discussion regarding whether 500 feet separation distance from a rural or residential zone was adequate, and the consensus of the Commission was that it should be 2000 feet. She stated that due to the Commissions experience with excavation operations near a rural or residential zone they thought this would protect neighbors from the effects of such operation.

Comments

G. Fogarty asked if this applied to operations in a residential zone, are there limits in a residential zone.

M. Chinatti replied that if someone came in for a permit in a residential zone it would not be permitted because processing is not permitted in a residential zone, only an industrial zone.

Mike Bennett representing Mr. and Mrs. Renz stated that he does not fully understand the change but stated looking at it appears that you are extending the setback from five hundred (500) feet to two thousand (2000) feet, which is four times what it was.

H. McKenney stated that the reason for the change is due to the Commissions' experience with processing equipment in or near residential zones and the members are in full agreement that the residents in those zones need to be protected.

Mike Bennett stated that if the equipment was in the middle of an area and a radius of two thousand (2000) feet was drawn around it, that would be over three quarters of a mile around the processing equipment. He was not sure if the Town had an industrial zone that big. He asked how this effects existing operations.

M. Chinatti said it would not effect existing operations but if they chose to expand then this would apply.

There was much discussion on how many acres were needed in order to comply with the proposed change. It was suggested that more research be done on the proposed change for the next meeting.

William Martin stated that a forty acre piece of land would not accommodate this change and he recommends the Commission take back the change.

H. McKenney stated that many of the changes are to ease up on restrictions in the industrial zone and the last thing they want to do is take away the restrictions and make them more difficult.

G. Walter stated the change is saying that a setback of 2000' of a rural or residential zone, depending on the situation, was appropriate, noting that the 2000' setback would not necessarily apply to the other side of the property.

H. McKenney said the change refers to the border to a residential zone.

H. McKenney asked if there were any other questions from the Commission or members of the public. There were none.

M/S/C (Buckley/Burr) to close the Public Hearing. (8:23 PM). Vote: Approved Unanimously

M/S/C (McKenney/Buckley) to table discussion on the proposed changes to the Salem Zoning Regulations until November 23, 2010. Vote: Approved Unanimously

M/S/C (Bingham/Buckley) to reconsider the vote to table discussion on the proposed changes to the Salem Zoning Regulations until November 23, 2010. Vote: Approved Unanimously

M/S/C (Bingham/Buckley) to table the discussion on the proposed changes to the Salem Zoning Regulations until November 16, 2010. Vote: Approved Unanimously

Petitioners: None

Public Comment: None

Old Business:

- 1) **Newman-Site Plan application (SP#10-10-01) for construction of a horse farm including barn, indoor and outdoor riding rings, exercise pan, septic system and appurtenances at 523 Old Colchester Road (Route 354)**

M. Chinatti stated the Town Engineer and the Sanitarian have looked at the revised plans and approved them. The Director of Public Works looked at them and did not see any problems. M. Chinatti recommended approving the site plan with conditions.

D. Bingham asked if the clerical problems that were on the last set of plans were corrected, to which M. Chinatti responded that they had been.

M/S/C (Buckley/Bingham) to approve application SP# 10-10-01 – Joanne Newman, applicant, Helen Lecce Estate, John Lecce, Executor, owner, for property at 523 Old Colchester Road for construction of a horse barn, indoor and outdoor riding rings, outdoor exercise pen, associated access/parking and appurtenances with the following conditions:

Prior to submission of one Mylar and three paper copies of the approved plan for signature by the Chairman of the Commission:

1. **Sheet 3, Note 2, typographical error shall be corrected (pile s/b piles);**
2. **A note shall be added t the plan that permit IWBUF #10-10-01 was issued on October 12, 2010 for work within the 75' upland review area of a wetland/watercourse;**
3. **Original signatures of P.E. /L.S. who prepared plans , and soil scientist who flagged wetlands, shall be included on the plans; and**
4. **A digital copy of the final plan shall be submitted.**

Vote: Approved Unanimously

- 2) **Thomas resubdivision-approved 5/18/10-81 Skyline Drive-Attorney Byrne's opinion**

H. McKenney informed the Commission that issues pertaining to the resubdivision which the Commission approved and which the Chairman had signed the mylars for have come

to the attention of the Commission. H. McKenney requested M. Chinatti to discuss the situation with the Commission's Attorney. H. McKenney stated there will be no investigating or hearing public comment on this issue tonight.

M. Chinatti referred to the various emails (See File Copy) related to the approved resubdivision and the issues that have arisen after the approval which all members received. She stated she was hand delivered a letter by Mr. Thomas from his attorney earlier in the day. The members have a copy of the letter. She has not had a chance to share the letter with the Commission's Attorney. She stated the public hearing for the application started on March 23, 2010 and closed on May 18, 2010, and subsequently was approved by the Commission. Originally there was to be a land swap between the applicant and a neighbor, since then there has been a "bump in the road" and the land swap will no longer be taking place. It was the opinion of Attorney Byrne that the land owner needs to submit revised resubdivision plans to show the situation more accurately. He originally stated there should be no public hearing but has since changed his opinion and now believes there should be one. M. Chinatti stated that deeds and easements are legal issues where the Commission has no previous.

H. McKenney stated he takes full responsibility for signing the mylars when they should not have been. Attorney Byrne has said there should be a public hearing and the Commission will decide what to do when the plans are submitted. The applicant can submit a new application or a revision of the already approved resubdivision.

G. Fogarty pointed out the new letter from the land owners' attorney may alter Attorney Byrne's opinion.

H. McKenney recommended the members take some time to look over the packet of emails and information regarding the resubdivision.

The Commission took a brief recess at 8:35 PM, and reconvened at 8:49 PM.

New Business

1) FEMA Map Updates/Workshop/Explanations

Diane Ifkovic from the CT DEP presented a powerpoint presentation of the revisions to the Flood Maps. She informed the Commission that the Salem Flood Maps will be finalized around June 2011. The maps have been available for review to all residents for months. She stated there were very minor changes to the map in Salem.

She described the basic flood plain, stated it was a USGS quad basis, was in digital format and based on the 2004 aerial flyover by the State. The DEP is encouraging people to look at the maps to see if they are in a flood plain.

She explained that home owners with a mortgage will be required to buy flood insurance and that their lender should be sending out notices to those home owners affected.

(D. Bingham leaves at 9:00)

E. Burr asked if someone finds themselves in a flood plain if the DEP would defend them. D. Ifkovic responded that they would walk them through the process and furnish guidance. She stated the maps were accurate to approximately 12.2 feet. The contesting of the map would require a survey, and that it would be up to the property owner to arrange/pay for that survey. The DEP is trying to educate the public but depends on the towns to get the word out.

H. McKenney asked D. Bourdeau if he has studied the maps and if he saw any changes for municipal lands. D. Bourdeau responded that he looked at them briefly and as far as he could see there were none.

H. McKenney suggested getting the presentation, flyers, and maps to put up on the Town's website.

Special Presentation

K. Buckley acknowledged this would be Chairman McKenney's last meeting. She stated Hugh had come on the Commission in 1999, and was elected Chairman in 2005. K. Buckley commended Hugh on always conducting meetings with courtesy, respect, and fairness. He has seen the Commission through difficult times and has always displayed grace under pressure and class. The Commission presented Hugh with a card and gift.

H. McKenney thanked the members and said it had been a pleasure to serve on the Commission and serve with all the members, past and present. He thanked previous Chairmen Larry Stevens and Dick Asafaylo, who were in attendance, and stated they were good teachers. He thanked M. Chinatti for always making sure he was prepared for meetings.

Dick Asafaylo thanked Hugh for his service. He reminded Hugh of the time when after just getting on the Commission and a difficult issue was before them, Hugh showed up with a three page dissertation. He stated that Hugh has been an excellent Chair and member of the Commission.

Larry Stevens stated he was on the Commission for twenty two years and when Hugh came on board he knew there would be "meaningful changes" He stated that Hugh studied and learned the regulations and had empathy for the applicant and what they were going through. Larry commended him on his sense of humor and stated that he was the one of the best if not the best member that the Planning and Zoning Commission has ever had. He then presented Hugh with a pink flamingo, reindeer food, eggs, and elf hat, and guardian angle pin.

Hugh McKenney thanked all and acknowledged the many new members on the Commission and how they bring new energy which is need from time to time.

Executive Session

M/S/C (Buckley/Burr) to go into executive session at 9:27PM to discuss Kobyluck appeal. Vote: Approve Unanimously.

M/S/C (Buckley/Burr) to come out of Executive Session at 9:50PM. Vote: Approve Unanimously.

G. ADJOURNMENT

M/S/C (Fogarty/Savalle) to adjourn at 10:18 pm. Vote: Approved Unanimously

Respectfully Submitted

**Sue Spang
Recording Secretary**