

Woodstock Planning & Zoning Commission Special Meeting Minutes

Thursday, January 13, 2011, Lower Level, Room 1, Woodstock Town Hall 7:00 PM

1) Call to Order at 7:15 p.m.

2) Roll Call: K. Goldsmith; J. Adiletta.; D. Young; F. Rich; D. Fortin, J. Gordon; G. Dickinson; J. Anastasi; S. Blodgett; D. Durst (7:20); D. Fey, ZEO/Town Planner

Guest Speaker: Atty. Robert DeCrescenzo, Updike Kelly & Spellacy

3) Citizen's Comments - None

4) Commission Training pertaining to land use, planning and zoning

Guest Speaker: Atty. Robert DeCrescenzo, Updike Kelly & Spellacy covers many topics important in land use planning. Topics are as follows:

I. Scenic Road Issues:

Woodstock has a Scenic Road Ordinance which requires their review for specified work within the road right of way.

- a. What constitutes road maintenance vs. improvements? Of particular concern is the work allowed under Section 4.b regarding town maintenance.*
- b. What is the role of the Commission in this ordinance other than holding a public hearing when requested (or as part of activity review per ordinance)?*

The answer is found in the language of the ordinance. It would be considered maintenance to re-grade and restore a crown, geometry of the road or swales. The town has an obligation to keep the roads passable and that would mean properly drained with driving surfaces remaining clear eliminating any dangerous situations to people or property. Unless the roadway was widened or the alignment of the road was changed, it would probably fall under maintenance for which PZC does not get involved. If that is unsatisfactory to PZC, then the ordinance should be amended to include maintenance and improvements to require PZC review. Because this is a gray area, DeCrescenzo recommends an amendment of the ordinance.

What about the introduction of material on these roads that are not native to the scenic road and how would that fall into the definition since it is not specified in the ordinance?

If asphalt was placed on a road that did not have it beforehand, it is clearly defined in the ordinance as an improvement. What was used on the roadway was a grinding material, which does work in stabilizing the roads very well, but may or may not be considered paving or simply making the road passable. This is another gray area that should be better defined in the ordinance and DeCrescenzo recommends amending to allow PZC to make this determination.

(D. Durst is present at 7:20 p.m.)

Another option is to have an agreement with the highway foreman to come before PZC with any proposed maintenance work where the PZC can informally make the determination of whether work falls under maintenance or improvement. An agreement would be best without changing the ordinance to “require” this determination process. The public should also be involved. DeCrescenzo also states that if at any point there is opposition from the BOS or the highway foreman on this determination, it is his opinion that PZC governs this ordinance and enforces it under the statute and the law. If PZC deems appropriate, they can schedule a public hearing, request the highway foreman’s presence at said hearing, whether the selectmen agree to attend or not. And if a determination is made by the PZC that any work has fallen under improvements, it would be within their purview to order the highway department to cease any work and even correct what might have been damaged.

The ordinance states the widening of the right of way or of the travel portion of the road and doesn’t specify any dimensions. There may be practical reasons as to why widening might be necessary, but this should be approved by PZC prior to. PZC is not limited to aesthetics and can consider cost to the town when evaluating any proposed work and must make sure the minutes are clear as to all the factors considered in their decisions.

Attorney DeCrescenzo talks about PZC’s level of responsibility as it relates to potential culpability when they are directing the highway foreman to discontinue any work being done from a public safety perspective. It would be reasonable for PZC to use their best judgment to allow the highway department’s involvement to ensure safety. He would never recommend denying any safety improvement on any road and again reiterates the fact that this is PZC’s responsibility to make this determination for scenic roads. Improvements and alterations are approved by PZC and DeCrescenzo believes drainage structures would fall under an alteration.

Attorney DeCrescenzo has offered to provide the Selectmen with a letter explaining PZC’s obligation and responsibility concerning the enforcement of this ordinance. At a town meeting, the residents have designated the Planning & Zoning Commission as the arm of the town responsible for enforcing this ordinance. PZC will discuss this further at the regular meeting of January 20, 2011.

II. Business Turnover Issues:

- a. *General business issues:*
 - i. *We do not have a business zone.*
 - ii. *We have many existing businesses that predate the adoption of Zoning in 1992.*
 - iii. *When businesses turnover on these properties it is difficult to track and to enforce.*
- b. *We need guidance on how to manage grandfathered businesses; tracking them and enforcing the regulations when there is a difference in use between the old use and the new use.*
- c. *What are the pros and cons of Site Plan Review process vs. a Business Zone with stated use classifications?*

DeCrescenzo recommends creating specific use categories and then a trigger mechanism that brings the change of business into staff to review as a change of use under the regulations. Regulations and definitions are too broad and perhaps some sub-definitions might better identify those commercial establishments that might have a bigger impact on neighborhoods and traffic and other factors that would be considered under the special permit. The current regulations do not effectively address the business turnover and change of use. PZC is reluctant to require special permits for businesses that change from one similar use to another since the process is long and costly and discourages business in Woodstock. ZEO is currently working on obtaining an accurate inventory of businesses in town. The regulations should establish a better process for the ZEO that encourages compliance and notification of these changes. Perhaps a Site Plan modification might be an option for the uses that are similar. Fey will check with NECCOG for model regulations.

What types of triggers should be considered with this regulation amendment to make this determination of Site Plan review as opposed to a special permit? The regulations should contain the uses that might require an additional level of scrutiny. DeCrescenzo recommends effective coordination with the building department for notification to the ZEO as to any building permits being applied for on any property with business use to review and determine if these changes, whether electrical, plumbing, demolition, etc., changes the business use in any way. Town needs to get a clear record and inventory of the businesses that currently exist and then what types of businesses are likely to come here in the future. A distinction should be made between personal and professional services. For example, self improvement types of business, to include martial arts, dance, musical instruction, yoga, may fall under the personal services heading.

What are the pros and cons of Site Plan review process versus a business zone and stated uses classification?

DeCrescenzo explains that the trend today is to have mixed use zones with multiple uses allowed on a single property. The community district already allows different uses around town but doesn't specify mixed uses can be on the same property. The business turnover problem could be addressed either through different zones or modification of the community district.

III. Bonds

- a. *What is the process for calling a bond / requiring a bond to be forfeited? Should we specify the process in the regulations?*
- b. *How can one special permit be related to another – if the same person has more than one special permit and doesn't do something right on one, how can we use the other as a leverage to get compliance with the problem special permit?*
- c. *Should the BOS be involved in the release of large bonds (not small bonds for driveways or E&S control)?*
 - i. *Does the municipality have liability related to these developments/bonds? Is that why our regulations specify the BOS have to be involved in review of request for the release of the*

larger bonds? It would be nice to streamline the process if we could.

The general rule of calling a bond is to send a letter to the applicant stating the work was not done. If it's a cash book account, then the owner of it is notified that the money will be taken to complete the work. Sometimes just threatening to call the bond may be enough to get the developer to complete the work since doing so may cause potential problems with future projects and surety bond requests. The town engineer seems to accurately estimate bond amounts and although some of the older subdivision bonds were not set high enough, this does not appear to be a problem on the projects Semprebon reviewed. It is pointed out that the new draft regulations will have better detail as to how bonds are handled. The town can put a lien on properties that the bond was not set high enough on and the town has to complete the work. There is a defined process in the state statutes. If a developer comes before PZC to request a five year extension, it is reasonable to re-evaluate the bonds at that time and increase them if necessary.

DeCrescenzo responds to question b and states that you cannot use a special permit as leverage to get compliance on a separate one, unless both special permits relate to the same property. However, this would not be the case with earth and gravel bonds. The special permit can be revoked after a hearing. The bond can also be increased.

BOS do not have any land use jurisdiction and therefore, they would not be involved. They do however have administrative jurisdiction with the finance department's involvement in administering. The decision to release the bond is PZC's charge.

IV. Special Permit

- a. Can we have a deadline for filing the Site Plan?*
- b. Regular Special Permits run with the land and currently it just states they are not effective until the mylar is filed, but E&G operations are limited to 2 years – when does the 2 years start?*
- c. Can we limit the regular special permit just to the current proposed business or for the use classification (runs with the land)?*
- d. Also, if the specially permitted use is discontinued for a certain period of time, can the permit be expired and how long could the certain period of time be?*
- e. Would having a business zone make more sense than to attempt to keep track of specially permitted uses and their timeframes (all over town and over time)?*
- f. Please explain the line between special permits and spot zoning?*

On a Site Plan, a five year period begins upon approval and expires upon five years from approval. But the statute clearly states that it has to be embossed on the Site Plan of when it expires. All special permits run with the land and Site Plan improvements must be done within five years. The special permit is the use and does not have an expiration, the Site Plan does however have a five year limit and the statute says you can extend for an additional five years and additional conditions can be added at that time, if necessary. It is important when issuing a special permit that it be noted that it is issued pursuant to whatever Site Plan was approved. Regulations are unclear as to "Site Plan" requirements

and recording deadlines. DeCrescenzo recommends specifically requiring a Site Plan as a condition of approval of any special permit that has to be approved at the same time, since that is the basis on which it is being approved.

Questions from the Commission on abandoned use. DeCrescenzo explains that CT is very strict on this. There is no statutory time for abandonment and really a factual determination on whether or not the owner intended to abandon the use and once the owner puts it to a different use, the previous use is then abandoned automatically.

Spot zoning is a use not allowed that a commission allows by virtue of a zoning map change for a particular small parcel of land that is inconsistent with the general land use of the area. A special permit within the community district would not be considered spot zoning.

V. General Commission Questions

- a. *Can the PZC create subcommittee or an ad hoc committee that is composed of PZC members and members of the public or can it only create such committees composed only of the PZC members as voted members, with members of the public participating in a non-voting capacity?*

Yes, as long as they are advisory. The purpose would be to make recommendations to PZC. This advisory board does not need to be made up of any commission members.

- b. *How does the Commission go about determining when a structure (not a house) on a property in town is actually being used as one would use a residence for the purposes of enforcing the town's zoning regulations regarding proper permitting and certificate of occupancies? That is, are there any legal definitions and/or court cases and/or state statutes that give guidance to the PZC in this regard?*

If any structure is a housekeeping unit having a bathroom and a kitchen and all the elements of a housekeeping unit, that's considered to be a dwelling unit and it would need to be permitted as such. Discussion follows on standards to be used in making this determination and how accessory and principal structures are defined.

- c. *Residential Sprinklers – are not allowed to be in zoning – covered by Building Code*

PZC does have the ability to require fire suppression system under the subdivision regulations. A sprinkler system could be an option in lieu of a dry hydrant or cistern.

- d. *The PZC requires a vote to initiate new business after 10 p.m. per their bylaws – is this a statutory requirement?*

This is not a statutory requirement but a local rule.

- e. *How is a "family" defined?]*

In the current definition, there is not a requirement that the individuals be related by blood or marriage. DeCrescenzo has researched and this term could be defined to make this a requirement, however, probably not in line with modern day thinking. PZC will work on the definition to include many variations of family but wouldn't allow a single family residence to become a dormitory for 12 students. Group homes must be considered a single family residence according to the general statutes.

Additional questions from the Commission to include mixed uses and currently the regulations prohibit unless in Village Green zone. The problem with mixed uses is more building code since they require full fire separation between uses.

(Attorney DeCrescenzo completes his annual training session at 9:53 p.m.)

5) Continuation of Draft Article VI Zoning Regulations

At this time the meeting was turned over the PZC subcommittee chair, David Fortin.

Copy of handout was provided.

Article VI, C, Section 6, Performance Standards

Size of operation along with hours of operation were discussed at length and the following change was agreed to:

- a. For earth and gravel operations that may extract or process more than 20,000 cubic yards per year the Commission may, at its discretion, limit the hours or days of operation and may prohibit the operator from bringing off-site materials in for processing.

6) Adjourn – 10:34 p.m.

MOTION TO ADJOURN BY BLODGETT/GOLDSMITH. MOTION CARRIED UNANIMOUSLY.

Respectfully Submitted,

Tina M. Lajoie, Clerk
Planning & Zoning Commission

Please note these minutes were completed with the use of the audio recording and I was not in attendance at this meeting.

DISCLAIMER:

These minutes have not yet been approved by the Planning & Zoning Commission. Please refer to next month's minutes for approval/amendments. Please note that the audio recording is the legal record of the meeting.