



Town of Westport
Planning and Zoning Commission
Town Hall, 110 Myrtle Avenue
Westport, CT 06880
Tel: 203-341-1030 Fax: 203-454-6145
www.westportct.gov

September 22, 2020

SPECIAL NOTICE ABOUT PROCEDURES FOR THIS ELECTRONIC MEETING:

Pursuant to the Governor's Executive Order No. 7B, there will be no physical location for this meeting. This meeting will be held electronically and live streamed on www.westportct.gov and shown on Optimum Government Access Channel 79 and Frontier Channel 6020. Public comments may be received PRIOR to the Public Hearing and should be sent to PandZ@westportct.gov by 12:00pm the day of the hearing. Public comments may be also be received DURING the meeting if they: (i) are sent to PandZcomments@westportct.gov, (ii) state your full name and address, (iii) identify the Public Hearing agenda item to which your comment relates, and (iv) are received before the public comment session on that agenda item ends. Comments on Public Hearing items that do not meet these requirements will be placed in the public file but will not be read aloud during the meeting. Comments not pertaining to Public Hearing items will not be read aloud during the meeting. If you would like to give your Public Hearing comments by participating in real time in the meeting, please send an email by noon on September 24, 2020, to maryyoung@westportct.gov stating your name and address and the Public Hearing agenda item to which your comments will relate, and meeting participation details will be emailed to you to enable you to participate in real time in the Public Hearing. Meeting materials are available at www.westportct.gov, on the Planning and Zoning Department web page under "P&Z Pending Applications & Recent Approvals".

AGENDA REVISION #2

PLANNING & ZONING COMMISSION MEETING

THURSDAY, SEPTEMBER 24, 2020 AT 7:00PM

I PUBLIC MEETING

Public participation for Public Meeting items is limited to submitting comments in advance of the meeting (until 12:00pm on the day of the meeting). Comments should be sent to pandz@westportct.gov

- 1. Bayberry Lane Bridge Replacement:** §8-24 Request by the First Selectman for a report from the Planning and Zoning Commission on a referral from the Westport Public Works Department regarding the removal of the existing bridge (Bridge No. 04969) over the Aspetuck River, and to replace it with a new bridge in approximate place and kind (*must decide by 9/25/20 + 90-day extension if needed*).
Applicant's presentation time: 10 minutes.
- 2. Calvary Road Bridge Replacement:** §8-24 Request by the First Selectman for a report from the Planning and Zoning Commission on a referral from the Westport Public Works Department regarding the removal of the existing bridge (Bridge No. 04964) over the West Branch Saugatuck River, and to replace it with a new bridge in approximate place and kind (*must decide by 9/25/20 + 90-day extension if needed*).
Applicant's presentation time: 10 minutes.

II PUBLIC HEARING

1. **312 Bayberry Lane:** *(This application will be opened and continued to 10/8/20 hearing, no testimony will be received at the 9/24/20 hearing)* Special Permit/ Site Plan Appl# PZ-20-00487 submitted by Robert Pryor for property owned by David Herling for excavation and fill activities associated with driveway expansion and regrading of the lawn, located in the Residence AAA zone, PID#E18025001*(must open by 9/26/20 + 90-day extension if needed).*

Applicant's presentation time: 15 minutes.

2. **Text Amendment #781:** Appl: PZ-20-00355 submitted by Rick Redniss, of Redniss and Mead, to modify the definition for Special Needs Individuals in §5-2, Specific Terms; to modify §11-2.3, Special Permit Uses Subject to Special Conditions to add reference to proposed §11-2.3.18, Special Needs Housing; to modify §13-2.1, Special Permit Uses Subject to Special Conditions in the Residence A District, to remove §13-2.1.2, Special Needs Housing; and to modify §32-27.1, Location, to expand where Special Needs Housing may be located to include any Town-owned property in any zoning district. A copy of the proposed text amendment is available on-line at www.westportct.gov is on file in the Town Clerk's Office, is on file in the Planning and Zoning Office, and is attached to this notice *(must open by 10/19/20 w/ 65- day extension provided).*

Applicant's presentation time: 20 minutes.

3. **222 Wilton Road:** Special Permit/ Site Plan Appl# PZ-20-00468 submitted by Andy Soumelidis for property owned by FBCH Holdings LLC for an after the fact approval for excavation and fill activities associated with proposed septic improvements, located in the Residence AA zone, PID# C12012002 *(must open by 9/19/20 + 90-day extension if needed).*

Applicant's presentation time: 15 minutes.

III WORK SESSION

(The following items will be discussed and voted on as time permits. The public may observe the work session, but not participate.)

New Business:

- Update from the Affordable Housing Subcommittee.

Old Business:

A copy of the Legal Notice/ Agenda for the Planning & Zoning Commission hearing on September 24, 2020 is available on-line at www.westportct.gov, on the Planning and Zoning Department web page under "Planning & Zoning Department". Due to the closing of Town Hall to the public during the COVID-19 emergency, and pursuant to the Governor's Executive Order #71, the Legal Notice/ Agenda for the Planning & Zoning Commission hearing on September 24, 2020 cannot be viewed at the Westport Town Clerk's Office or the Westport Planning and Zoning Office at this time.

It is the policy of the Town of Westport that all Town-sponsored public meetings and events are accessible to people with disabilities. If you need assistance in participating in a meeting or event due to a disability as defined under the Americans with Disabilities Act, please contact Westport's ADA Coordinator at 203-341-1043 or eflug@westportct.gov at least three (3) business days prior to the scheduled meeting or event to request an accommodation.

Dated at Westport, Connecticut on this 22nd day of September 2020, Danielle Dobin, Chairman, Planning and Zoning Commission.

Note:

Proposed new language is shown underlined. Language to be removed is shown ~~[in brackets]~~.

Proposed Text Change

TO AMEND

§5 “DEFINITIONS”, by modifying “Special Needs Individuals”

§11 “Residence AAA District”, by modifying §11-2.3 “Special Permit Uses Subject to Special Conditions”, by adding 11-2.3.18

§13 “Residence A”, by removing §13-2.1.2 “Special Needs Housing”

§32-27.1 “Special Needs Housing”, by modifying §32-27.1 “Location”

§5 DEFINITIONS

§5-2, Specific Terms

Special Needs Individuals:

Persons that are blind, physically disabled, and/or have intellectual disabilities pursuant to Sections 1-1f, and/or 1-1g, of the Connecticut General Statutes and/or persons with a disability/handicap pursuant to the Federal Fair Housing Act.

§11 Residence AAA District

11-2.3 Special Permit Uses Subject to Special Conditions

11-2.3.18

Special Needs Housing pursuant to §32-27

§13 Residence A District

13-2.1 Special Permit Uses Subject to Special Conditions

~~13-2.1.2~~

~~Special Needs Housing (778, 06/03/2020)~~

32-27.1 Location

Special Needs Housing shall be located [~~within an existing building in the Residence A District~~] on Town owned property.

https://www.cga.ct.gov/current/pub/chap_124.htm#sec_8-3e

Sec. 1-1f. “Blind”, “physically disabled”, defined. For purposes of sections 3-10e, 4a-60, subdivision (12) of section 38a-816 and sections 46a-58, 46a-60, 46a-64, 46a-70 to 46a-73, inclusive, 46a-75, 46a-76 and 52-175a:

(a) An individual is blind if his central visual acuity does not exceed 20/200 in the better eye with correcting lenses, or if his visual acuity is greater than 20/200 but is accompanied by a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than twenty degrees;

(b) An individual is physically disabled if he has any chronic physical handicap, infirmity or impairment, whether congenital or resulting from bodily injury, organic processes or changes or from illness, including, but not limited to, epilepsy, deafness or hearing impairment or reliance on a wheelchair or other remedial appliance or device.

(P.A. 73-279, S. 1; P.A. 74-346; P.A. 75-346; P.A. 79-631, S. 41, 111; P.A. 80-259, S. 2.)

History: P.A. 74-346 added Subsec. (b) defining “physically disabled”; P.A. 75-346 clarified definition of “physically disabled”; P.A. 79-631 deleted reference to Sec. 53-34a, substituting Sec. 53-34 (later transferred to Sec. 46a-58); P.A. 80-259 added reference to Sec. 38-61(12).

Sec. 1-1g. “Intellectual disability” defined. (a) Except as otherwise provided by statute, “intellectual disability” means a significant limitation in intellectual functioning existing concurrently with deficits in adaptive behavior that originated during the developmental period before eighteen years of age.

(b) As used in subsection (a) of this section, “significant limitation in intellectual functioning” means an intelligence quotient more than two standard deviations below the mean as measured by tests of general intellectual functioning that are individualized, standardized and clinically and culturally appropriate to the individual; and “adaptive behavior” means the effectiveness or degree with which an individual meets the standards of personal independence and social responsibility expected for the individual’s age and cultural group as measured by tests that are individualized, standardized and clinically and culturally appropriate to the individual.

(P.A. 78-148, S. 1; P.A. 80-259, S. 3; P.A. 82-51, S. 1; P.A. 83-587, S. 1, 96; P.A. 99-122, S. 5; P.A. 05-288, S. 1; P.A. 11-16, S. 1; 11-129, S. 2; P.A. 12-136, S. 1; 12-143, S. 4; P.A. 15-54, S. 1.)

History: P.A. 80-259 added reference to Sec. 38-61(12); P.A. 82-51 clarified terms used in the statutory definition in new Subsec. (b) and updated list of applicable sections in prior provisions, now Subsec. (a); P.A. 83-587 made a technical amendment; P.A. 99-122 amended Subsec. (a) to make definition applicable to Secs. 53a-59a, 53a-60b, 53a-60c and 53a-61a; (Revisor’s note: In 2005, a reference to Sec. “45a-668” was changed editorially by the Revisors to Sec. “45a-669” since Sec. 45a-668 was repealed by P.A. 04-54); P.A. 05-288 made a technical change in Subsec. (b), effective July 13, 2005; P.A. 11-16 amended Subsec. (a) by making definition applicable to Secs. 17a-210b, 17a-580, 46a-11a to 46a-11g, 46a-64b, 46b-84, 53a-46a, 53a-320 and 54-56d and

by removing references to Secs. 17a-274 and 17a-281, added new Subsec. (b) defining “intellectual disability” and setting forth sections to which the definition applies and redesignated existing Subsec. (b) as Subsec. (c), effective May 24, 2011; P.A. 11-129 deleted references to Secs. 46a-11a to 46a-11g in Subsec. (a), transferred various section references from Subsec. (a) to Subsec. (b) and added section references in Subsec. (b); P.A. 12-136 amended Subsec. (a) by redefining “mental retardation” and amended Subsec. (c) by

deleting definitions of “general intellectual functioning”, “significantly subaverage” and “developmental period”, adding definition of “significant limitation in intellectual functioning” and redefining “adaptive behavior”; P.A. 12-143 amended Subsec. (b) to delete reference to Sec. 2c-2b and to make a technical change, effective July 1, 2012; P.A. 15-54 amended Subsec. (a) by replacing reference to Secs. 17a-210b and 38a-816 with “Except as otherwise provided by statute”, replacing “mental retardation” with “intellectual disability” and adding “existing concurrently with”, deleted former Subsec. (b) re meaning of intellectual disability for purposes of listed sections and redesignated existing Subsec. (c) as Subsec. (b), effective June 19, 2015.

Interpreting section to allow consideration of all intelligence tests that meet the statutory criteria best furthers legislature's intent to clarify and narrow definition of mental retardation to ensure that persons with borderline normal intelligence are not classified as mentally retarded, to prevent inappropriate commitment of such persons to mental retardation facilities and to assure that limited administrative resources are devoted to those most in need. 277 C. 594.

Sec. 8-3e. Regulation of community residences for persons with intellectual disability, child-care residential facilities, community residences for persons receiving mental health or addiction services and hospice facilities.

(a) No zoning regulation shall treat the following in a manner different from any single family residence: (1) Any community residence that houses six or fewer persons with intellectual disability and necessary staff persons and that is licensed under the provisions of section 17a-227, (2) any child-care residential facility that houses six or fewer children with mental or physical disabilities and necessary staff persons and that is licensed under sections 17a-145 to 17a-151, inclusive, (3) any community residence that houses six or fewer persons receiving mental health or addiction services and necessary staff persons paid for or provided by the Department of Mental Health and Addiction Services and that has been issued a license by the Department of Public Health under the provisions of section 19a-491, if a license is required, or (4) any residence that provides licensed hospice care and services to six or fewer persons, provided such residence is (A) managed by an organization that is tax exempt under Section 501(c)(3) of the Internal Revenue Code of 1986, or any subsequent corresponding internal revenue code of the United States, as from time to time amended; (B) located in a city with a population of more than one hundred thousand and within a zone that allows development on one or more acres; (C) served by public sewer and water; and (D) constructed in accordance with applicable building codes for occupancy by six or fewer persons who are not capable of self-preservation.

(b) Any resident of a municipality in which such a community residence or child-care residential facility is located may, with the approval of the legislative body of such municipality, petition (1) the Commissioner of Developmental Services to revoke the license of such community residence on the grounds that such community residence is not in compliance with the provisions of any statute or regulation concerning the operation of such residences, (2) the Commissioner of Children and Families to revoke the license of such child-care residential facility on the grounds that such child-care residential facility is not in compliance with the provision of any general statute or regulation concerning the operation of such child-care residential facility, or (3) the Commissioner of Mental Health and Addiction Services to withdraw funding from such community residence on the grounds that such community residence is not in compliance with the provisions of any general statute or regulation adopted thereunder concerning the operation of a community residence.

(P.A. 79-353; P.A. 84-341, S. 6, 8; P.A. 89-375, S. 4, 5; P.A. 01-161, S. 1, 4; P.A. 05-280, S. 56; P.A. 07-73, S. 2(b); P.A. 11-129, S. 20; P.A. 13-247, S. 68; P.A. 16-66, S. 37.)

History: P.A. 83-341 added Subsec. (b) concerning petitions for revocation of license; P.A. 89-375 substituted “necessary” for “two” in referring to staff persons; P.A. 01-161 applied provisions to child-care residential facilities and made technical changes, effective July 1, 2001; P.A. 05-280 amended Subsec. (a) by adding Subdiv. (3) re zoning regulations pertaining to any community residence that houses six or fewer persons receiving mental health or addiction services and by making technical changes and amended Subsec. (b) by adding Subdiv. (3) re the ability of a resident of a municipality to petition the Commissioner of Mental Health and Addiction Services to withdraw funding from a community residence not operating in compliance with the provisions of a governing statute or regulation, effective July 1, 2005; pursuant to P.A. 07-73 “Commissioner of Mental Retardation” was changed editorially by the Revisors to “Commissioner of Developmental Services”, effective October 1, 2007; pursuant to P.A. 11-129, “mentally retarded persons” was changed editorially by the Revisors to “persons with intellectual disability” in Subsec. (a); P.A. 13-247 amended Subsec. (a) to add Subdiv. (4) re hospice facilities; P.A. 16-66 amended Subsec. (a)(4) to replace “inpatient” with “licensed”, to replace “facility” with “residence”, to add Subpara. (D) re constructed in accordance with building codes for occupancy by six or fewer persons not capable of self-preservation and to make conforming changes.

Fair Housing Act

[The Fair Housing Act](#), 42 U.S.C. 3601 et seq., prohibits discrimination by direct providers of housing, such as landlords and real estate companies as well as other entities, such as municipalities, banks or other lending institutions and homeowners insurance companies whose discriminatory practices make housing unavailable to persons because of:

- race or color
- religion
- sex
- national origin
- familial status, or
- disability.

In cases involving discrimination in mortgage loans or home improvement loans, the Department may file suit under both the Fair Housing Act and the pattern or practice of discrimination or where a denial of rights to a group of persons raises an issue of general public importance. Where force or threat of force is used to deny or interfere with fair housing rights, the Department of Justice may institute criminal proceedings. The Fair Housing Act also provides procedures for handling individual complaints of discrimination. Individuals who believe that they have been victims of an illegal housing practice, may file a complaint with the Department of Housing and Urban Development [HUD] or file their own lawsuit in federal or state court. The Department of Justice brings suits on behalf of individuals based on referrals from HUD.

Discrimination in Housing Based Upon Race or Color

One of the central objectives of the [Fair Housing Act](#), when Congress enacted it in 1968, was to prohibit race discrimination in sales and rentals of housing. Nevertheless, more than 30 years later, race discrimination in housing continues to be a problem. The majority of the Justice Department's pattern or practice cases involve claims of race discrimination. Sometimes, housing providers try to disguise their discrimination by giving false information about availability of housing, either saying that nothing was available or steering home seekers to certain areas based on race. Individuals who receive such false information or misdirection may have no knowledge that they have been victims of discrimination. The Department of Justice has brought many cases alleging this kind of discrimination based on race or color. In addition, the Department's Fair Housing Testing Program seeks to uncover this kind of hidden discrimination and hold those responsible accountable. Most of the mortgage lending cases brought by the Department under the Fair Housing Act and Equal Credit Opportunity Act have alleged discrimination based on race or color. Some of the Department's cases have also alleged that municipalities and other local government entities violated the Fair Housing Act when they denied permits or zoning changes for housing developments, or relegated them to predominantly minority neighborhoods, because the prospective residents were expected to be predominantly African-Americans.

Discrimination in Housing Based Upon Religion

The [Fair Housing Act](#) prohibits discrimination in housing based upon religion. This prohibition covers instances of overt discrimination against members of a particular religion as well as less direct actions, such as zoning ordinances designed to limit the use of private homes as a places of worship. The number of cases filed since 1968 alleging religious discrimination is small in comparison to some of the other prohibited bases, such as race or national origin. The Act does contain a limited exception that allows non-commercial housing operated by a religious organization to reserve such housing to persons of the same religion.

Discrimination in Housing Based Upon Sex, Including Sexual Harassment

The Fair Housing Act makes it unlawful to discriminate in housing on the basis of sex. In recent years, the Department's focus in this area has been to challenge sexual harassment in housing. Women, particularly those who are poor, and with limited housing options, often have little recourse but to tolerate the humiliation and degradation of sexual harassment or risk having their families and themselves removed from their homes. The Department's enforcement program is aimed at landlords who create an untenable living environment by demanding sexual favors from tenants or by creating a sexually hostile environment for them. In this manner we seek both to obtain relief for tenants who have been treated unfairly by a landlord because of sex and also deter other potential abusers by making it clear that they cannot continue their conduct without facing repercussions. In addition, pricing discrimination in mortgage lending may also adversely affect women, particularly minority women. This type of discrimination is unlawful under both the Fair Housing Act and Equal Credit Opportunity Act.

Discrimination in Housing Based Upon National Origin

The Fair Housing Act prohibits discrimination based upon national origin. Such discrimination can be based either upon the country of an individual's birth or where his or her ancestors originated. Census data indicate that the Hispanic population is the fastest growing segment of our nation's population. The Justice Department has taken enforcement action against municipal governments that have tried to reduce or limit the number of Hispanic families that may live in their communities. We have sued lenders under both the Fair Housing Act and the Equal Credit Opportunity Act when they have imposed more stringent underwriting standards on home loans or made loans on less favorable terms for Hispanic borrowers. The Department has also sued lenders for discrimination against Native Americans. Other areas of the country have experienced an increasing diversity of national origin groups within their populations. This includes new immigrants from Southeastern Asia, such as the Hmong, the former Soviet Union, and other portions of Eastern Europe. We have taken action against private landlords who have discriminated against such individuals.

Discrimination in Housing Based Upon Familial Status

The Fair Housing Act, with some exceptions, prohibits discrimination in housing against families with children under 18. In addition to prohibiting an outright denial of housing to families with children, the Act also prevents housing providers from imposing any special requirements or conditions on tenants with custody of children. For example, landlords may not locate families with children in any single portion of a complex, place an unreasonable restriction on the total number of persons who may reside in a dwelling, or limit their access to recreational services provided to other tenants. In most instances, the amended Fair Housing Act prohibits a housing provider from refusing to rent or sell to families with children. However, some facilities may be designated as Housing for Older Persons (55 years of age). This type of housing, which meets the standards set forth in the Housing for Older Persons Act of 1995, may operate as "senior" housing. The Department of Housing and Urban Development (HUD) has published regulations and additional guidance detailing these statutory requirements.

Discrimination in Housing Based Upon Disability

The Fair Housing Act prohibits discrimination on the basis of disability in all types of housing transactions. The Act defines persons with a disability to mean those individuals with mental or physical impairments that substantially limit one or more major life activities. The term mental or physical impairment may include conditions such as blindness, hearing impairment, mobility impairment, HIV infection, mental retardation, alcoholism, drug addiction, chronic fatigue, learning disability, head injury, and mental illness. The term major life activity may include seeing, hearing, walking, breathing, performing manual tasks, caring for one's self, learning, speaking, or working. The Fair Housing Act also protects persons who have a record of such an impairment, or are regarded as having such an impairment. Current users of illegal controlled substances, persons convicted for illegal manufacture or distribution of a controlled substance, sex offenders, and juvenile offenders are not considered disabled under the Fair Housing Act, by virtue of that status. The Fair Housing Act affords no protections to individuals with or without disabilities who present a direct threat to the persons or property of others. Determining whether someone poses such a direct threat must be made on an individualized basis, however, and cannot be

based on general assumptions or speculation about the nature of a disability. The Division's enforcement of the Fair Housing Act's protections for persons with disabilities has concentrated on two major areas. One is insuring that zoning and other regulations concerning land use are not employed to hinder the residential choices of these individuals, including unnecessarily restricting communal, or congregate, residential arrangements, such as group homes. The second area is insuring that newly constructed multifamily housing is built in accordance with the Fair Housing Act's accessibility requirements so that it is accessible to and usable by people with disabilities, and, in particular, those who use wheelchairs. There are other federal statutes that prohibit discrimination against individuals with disabilities, including the Americans with Disabilities Act, which is enforced by the Disability Rights Section of the Civil Rights Division.

Discrimination in Housing Based Upon Disability Group Homes

Some individuals with disabilities may live together in congregate living arrangements, often referred to as "group homes." The Fair Housing Act prohibits municipalities and other local government entities from making zoning or land use decisions or implementing land use policies that exclude or otherwise discriminate against individuals with disabilities. The Fair Housing Act makes it unlawful --

- To utilize land use policies or actions that treat groups of persons with disabilities less favorably than groups of non-disabled persons. An example would be an ordinance prohibiting housing for persons with disabilities or a specific type of disability, such as mental illness, from locating in a particular area, while allowing other groups of unrelated individuals to live together in that area.
- To take action against, or deny a permit, for a home because of the disability of individuals who live or would live there. An example would be denying a building permit for a home because it was intended to provide housing for persons with mental retardation.
- To refuse to make reasonable accommodations in land use and zoning policies and procedures where such accommodations may be necessary to afford persons or groups of persons with disabilities an equal opportunity to use and enjoy housing. What constitutes a reasonable accommodation is a case-by-case determination. Not all requested modifications of rules or policies are reasonable. If a requested modification imposes an undue financial or administrative burden on a local government, or if a modification creates a fundamental alteration in a local government's land use and zoning scheme, it is not a "reasonable" accommodation.

Discrimination in Housing Based Upon Disability -- Accessibility Features for New Construction

The Fair Housing Act defines discrimination in housing against persons with disabilities to include a failure "to design and construct" certain new multi-family dwellings so that they are accessible to and usable by persons with disabilities, and particularly people who use wheelchairs. The Act requires all newly constructed multi-family dwellings of four or more units intended for first occupancy after March 13, 1991, to have certain features: an accessible entrance on an accessible route, accessible common and public use areas, doors sufficiently wide to accommodate wheelchairs, accessible routes into and through each dwelling, light switches, electrical outlets, and thermostats in accessible location, reinforcements in bathroom walls to accommodate grab bar installations, and usable kitchens and bathrooms configured so that a wheelchair can maneuver about the space.

Developers, builders, owners, and architects responsible for the design or construction of new multi-family housing may be held liable under the Fair Housing Act if their buildings fail to meet these design requirements. The Department of Justice has brought many enforcement actions against those who failed to do so. Most of the cases have been resolved by consent decrees providing a variety of types of relief, including: retrofitting to bring inaccessible features into compliance where feasible and where it is not -- alternatives (monetary funds or other construction requirements) that will provide for making other housing units accessible; training on the accessibility requirements for those involved in the construction process; a mandate that all new housing projects comply with the accessibility requirements, and monetary relief for those injured by the violations. In addition, the Department has sought to promote accessibility through building codes.
