

From: [don.bergmann](#)
To: [Planning and Zoning](#)
Subject: DOSRD #2 Commission Meeting
Date: Sunday, December 5, 2021 11:47:53 AM

CAUTION: This email originated from outside of the Town of Westport's email system. Do not click links or open attachments unless you recognize the sender and know the content is safe.

To: Westport Planning & Zoning Commission
From: Don Bergmann 32 Sherwood Dr. Westport CT
Re: Senior Center Uses of DOSRD #2

The Commission is meeting on Wednesday to consider the acceptability under the language of DOSRD #2 of certain incidental, passive, recreational, outdoor activities in which the Senior Center and its members would like to participate outdoors. Here are my comments:

1. This matter pertains solely to the Senior Center and is and will be an interpretation by the Commission of the language and purpose of DOSRD #2;
2. The Commission should have confirmed the activities sought by the Senior Center with Susan Pfister, Senior Center Director. All such activities should be addressed and considered, well knowing that it is possible certain of the activities that may appeal to the Senior Center will not be permitted, e.g. a mini golf course;
3. The examples of activities referenced in your meeting notice, in my view, easily fall within the activities permitted in DOSRD #2, subject to a Special Permit and other filings. 40-3.3 grants the Commission considerable authority to allow a broad range of municipal uses and it is certainly the case that the uses by the Senior Center being considered are, by reason of their relationship to the Senior Center, a Municipal Building and service, "municipal uses";
4. The activities being considered are quite passive, do not attain a level of an organized sport, e.g. with teams and competition, will not generate notable noise, will not injure the land, will be limited as the number of participants and could be limited as to hours and days;
5. Irrespective of the applicability of 40-3.3, if used, the activities are inherently within the limits of DOSRD #2. To the extent that there is any vague uncertainty as to a particular use, that can easily be addressed by an interpretation, a finding, by the Commission. Such a finding would easily be sustained by a CT Court if challenged by a citizen. The CT Courts are quite deferential to such interpretative findings of the Commission and a reversal of a thoughtful finding by the Commission is extremely unlikely. In addition, one must wonder who would choose to spend money and time to bring such a legal challenge. There might even be a question of standing, i.e. a general member of the public would not have any right to object to a simple finding by the Commission for various reasons, including not being impacted by the finding. To the extent, our Town Attorney suggests caution as to such a finding by the Commission, i.e. the possibility that the Commission may not have the requisite authority, I think it important to give minimal credence to such a suggestion due to the nature of the issue, its desirability to the Seniors and the Senior Center and the

absence of any likelihood that a challenge to an interpretive judgment of the Commission would be found to be illegal.

6. The activities being considered are totally consistent with Senior Center activities in general. The activities could be undertaken indoors. Indeed, a review of the applicable language as to the uses and activities available to the Senior Center by reason of having been grandfathered under DODRD #2 could very possibly make it clear that the Senior Center is entitled as of right to undertake the activities being considered simply as part of the use of the Senior Center footprint, namely the building and the land.

A judgment to allow or authorize the activities sought by the Senior Center will pertain only to the Senior Center. It will not constitute spot zoning, nor will it provide any change to other DOSRD #2 areas. If approved by the Commission, that approval will not result in organized yoga classes throughout Baron's South. Rather an approval will simply allow standard Senior Center activities to be conducted outdoors. The activities will also have their origin and undertaking as part of a Town Municipal Senior Center.

I am aware that Chair Dobin has expressed legal concerns with what the Senior Center seeks. I also know that Danielle and, I think, all on the Commission would like to allow these Senior Center activities to be conducted. To me, that suggests that the Commission allow for these activities and if Danielle continues to believe that a legal challenge will be brought and could succeed, she could make that point as part of the record. Finally, the action being addressed on Wednesday has nothing to do with true "non passive" activities, e.g. pickle ball. That is a discussion for another time. It is a discussion in which there will be many differing, legitimate viewpoints. No such legitimate, differing viewpoints are likely to surface as to the passive activities now being considered for Baron's South and the Senior Center.

As always thank you for your hard work

Don Bergmann