



Town of Westport
Planning and Zoning Commission
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Minutes

Planning and Zoning Commission's

Zoning Regulation Revision Subcommittee

Wednesday, December 8, 2021 at 12:00pm

P&Z Commissioners in Attendance:

Danielle Dobin, Subcommittee Member and P&Z Commission Chair
Paul Lebowitz, Subcommittee Member and P&Z Commission Member
Michael Cammeyer, Subcommittee Member and P&Z Commission Member
Neil Cohn, P&Z Commission Member
John Bolton, P&Z Commission Member Alternate
Marc Levey, P&Z Commission Member Alternate

Public in Attendance

Tony McDowell, Sustainable Westport/Earthplace
Bill Achilles, Architect
Rick Hoag, Architect
Christina Gordon, Architect
Harris Falk, RTM District 2 Representative
Wendy Crowther, Resident
Mark Donovan, Resident
Candace Savin
Claudia S.
Serenity Bishop
Ciara Webster
Peter Cadoux

Town Hall Staff

Mary Young, Planning and Zoning Director
Michelle Perillie, Deputy Planning and Zoning Director
Michael Kiselak, Planner
Alicia Mozian, Conservation Director

Agenda

1. Discussion of draft text amendment regarding preservation of trees during construction.

2. Discussion of expanded outdoor dining regulations in consideration of creating a more permanent regulation.
3. Discussion of draft text amendment to permit organized non-team activities (for example, outdoor painting classes, organized hikes and yoga classes) in the DOSRD 2.
4. Discussion of existing prohibition on Retail/Service Uses above the first floor in downtown Westport.

P&Z Zoning Regulation Revision Subcommittee Chairwoman Danielle Dobin welcomed meeting attendees and read **Agenda Item #1** into the record.

Ms. Dobin explained that the Commission is seeking ways to address erosion concerns by considering ways to preserve trees. She asked P&Z staff to discuss research into other municipalities' regulations and explain the draft text that was circulated.

P&Z Planner Michael Kiselak gave an overview of the relevant regulations in the following CT municipalities:

- Hartford requires approval from city forester to remove significant trees of 13" or more. They require protection during development and impose fines for unpermitted removal.
- Ridgefield requires landscaping plans for site plan applications to preserve trees 18" or more to the greatest extent possible. Tree protection measures must be installed around preserved trees during construction. Any significant trees removed must be adequately replaced.
- Greenwich requires S&E plans for projects that disturb ½ acre or more. The plan must detail tree protection measures.
- Brooklyn, CT requires that clearing limits be marked in the field prior to the issuance of a ZP to ensure contractors know where disturbance limits are supposed to be.

Mr. Kiselak described the draft regulated, which would define "Mature Trees" as anything 12" or greater diameter. A new section, §31-17, Tree Preservation Regulations, would seek to restrict removal of trees in setbacks unless there is a safety concern. They could be removed by a Zoning Permit if there is a demonstrable safety concern. Removal of Mature Trees not in setbacks on private property could be removed as-of-right but would require a permit be filed. The draft seeks a balanced approach that would restrict unnecessary cutting but still allow for tree removal in certain cases where necessary. The Commission and staff would need to ensure with the Town Attorney that any amendment is legal and want input from the community to refine any regulations.

P&Z Deputy Director Michelle Perillie added that staff has previously learned from the Town Attorney's Office that P&Z does have ability to regulate tree cutting for the purposes of erosion control.

Ms. Dobin noted that removal of mature trees causes numerous issues related to erosion, so the proposed regulation seeks to address that.

Mr. Lebowitz stated that this is an important topic with far reaching consequences. He wants to hear from public but thinks the time has come for this topic to be addressed through regulations.

Mr. Cammeyer wants to hear from public. He brought up issue of privacy due to removal of trees in setbacks and thought maybe there's leeway if a fence is erected in place of trees. He's in favor of some regulation on this topic but it needs to be thoroughly discussed first.

Mr. Levey had no comments at this time.

Mr. Bolton asked where some of the specifics came from in the proposed text.

Ms. Dobin responded that the proposal is just a baseline starting point and we're seeking feedback now to figure out which directions to go in.

Alicia Mozian, the Conservation Director, said she has been waiting for something like this for years. The Conservation Department often gets erosion complaints due to clear cutting. Developers sometimes clear cut before permits are received for the intended construction. The lag time between clearing and start of construction leads to erosion problems. Ms. Mozian likes the idea of not allowing tree cutting within setbacks, but pointed out that septic systems can be within 10ft of property lines, so the regulation should exempt for that. She added that Conservation has a required 20-foot non-disturbance buffer from wetlands. When someone wants to cut down a tree within the upland area, they must submit a statement from a licensed arborist documenting that the tree is dead/dying or otherwise OK to remove. She added another suggestion to establish limits of disturbance on a site plan when issuing Zoning Permits.

Danielle asked for more details about Conservation's process for removing trees in non-disturbance areas. What does the applicant file and how is the decision made?

Ms. Mozian responded that an applicant calls Conservation, and staff then inspects the property and issues an as-of-right permit. There are certain activities that someone with wetlands can do without any permits (and they don't have to pay) but Conservation needs to verify it first in writing. Conservation has a form for the property owner to fill out.

Danielle asked: what about people who don't know that they need permits and do the work without one?

Ms. Mozian said it comes down to education. All property owners in town get a new homeowner letter from Conservation based on property transfer list from the Town Clerk every week. This informs a homeowner of wetlands and that they need to contact Conservation before doing work. Neighbors are another source of information through complaints being raised. Conservation also tries to do regular press releases but that has been tough under Covid, but they plan to ramp that back up.

P&Z Director Mary Young pointed out that the draft text talks about property owners being able to remove mature trees as of right subject to filing with P&Z first. She suggested that the language could be modified to make sure there's a referral to Conservation as part of the

process. This would ensure Conservation is aware of any tree removal in regulated areas. Ms. Young added that §43 of the Zoning Regulations requires any tree 8" or more to be shown on existing conditions plans. The size may be arbitrary, but we should figure out what size makes sense and ensure we know how to measure trees. The Tree Warden could help. She stressed that focus be given to the future Explanatory Statement to make the erosion control purpose clear. Perhaps then the amendment should not be limited to just setbacks – sedimentation and erosion can happen anywhere on a property. Perhaps §37, Sediment and Erosion Control Regulations, can be modified with appropriate cross references. Ms. Young acknowledged that this is not the first time something like this has been proposed – Ms. Mozian has been unsuccessful in past with tree ordinances. Ms. Young asked: are there lessons learned and pitfalls to be aware of?

Ms. Mozian recalled that there were RTM-level attempts at an ordinance on this topic a couple times in the past. The Town Attorney at the time said the Town can't regulate this on private property. The message last time was that the P&Z Commission can adopt a local amendment to the Zoning Regulations that would allow site-specific tree regulation as part of a site plan review for development. She added that New York State has an enabling state statute that allows municipalities to adopt ordinances. CT doesn't have that. She's glad to hear Ms. Perillie say the Town Attorney has opined that something like this proposal is ok.

Ms. Dobin stated that the CT Zoning Enabling Act was modified last year and has new guidelines for green practices/sustainability initiatives. It directs Towns to expressly promote certain sustainable activities. She wants outreach to developers and citizens for this regulation development process. Sustainable Westport could also give guidance on what trees to protect.

Tony McDowell of Earthplace/Sustainable Westport said that his organization was involved in discussing this topic during development of the *2017 Plan of Conservation and Development* (POCD), Section 4.5, "Address Other Quality of Life Issues." Mr. McDowell said to consider both human life and ecosystem health. The *2017 POCD* points towards this type of proposed tree regulation. He stated that some trees are more valuable than others, such as oak trees which support a lot of biodiversity, and backyard ecosystems are all connected. Human neighbors and neighborhoods therefore have a collective interest in preserving trees. He recommended adding something to the regulations like "encourage the use of native species instead of invasive species." This is important because trees have different values; replacement of one tree with the proper type(s) is important. He noted that he's not an expert on drainage/erosion, but knows it's important to protect trees, including root systems, from damage from heavy machinery. The Tree Warden would be able to provide guidance so as not to harm trees during development. Trees produce oxygen, shade, cooling, habitat, and are valuable for regulating heating/cooling of structures. Tree preservation is a quality-of-life issue writ large. He's interested in reading the draft regulations as they go through.

Ms. Dobin said she would welcome a list of native trees to be provided by Mr. McDowell to specify in the regulations.

Mark Donovan, Westport resident, shared that he is currently going through a situation with a neighboring developer related to tree clearing. His concern is that the tree clearing

significantly transforms the property. He also worries about structure damage due to disturbance of the tree roots and runoff issues. Mr. Donovan was startled to learn that there are no tree protection regulations in Westport currently. He wants any future regulations on this topic to have teeth for enforcement. He's concerned that the draft presented does not have a clear threshold for which trees are dangerous enough to warrant removal. He also said it's important to consider heavy equipment that damages root systems. There should be consideration that removing a tree and replacing it doesn't jeopardize animal habitat because new trees aren't always equivalent to mature trees.

Ms. Dobin concurred that in Westport there is currently nothing to enforce the preservation of trees.

Commissioner Neil Cohn joined the meeting and had no comment at this time.

Ms. Dobin stated that it's important to add marking of clearing areas to the proposed regulation. Contractors shouldn't remove trees outside of the designated area. She would also like to make it a policy to protect trees from being incidentally damaged.

Architect Bill Achilles offered that he thinks the Town of Wilton has regulations regarding tree removal, which staff could investigate. He recalls that you can't clear a lot without a permit. Mr. Achilles noted that, in Westport, certain things are allowed in setbacks such as septic and drainage systems. This may impact removal of trees. Additionally, the proposal should define pruning and how to regulate it. He also said to consider if surveys should be required to show the locations of trees and to consider what constitutes sufficient replacement of trees that were removed. He thinks developers will probably push back on these regulations. Lastly, he pointed out that retaining trees may block sun, which is part of the architectural design process.

Ms. Dobin followed that there's always an upside and downside to text amendments. She wants to engage developers to get their feedback. This has arisen out of the lack of tree regulation today and the impacts on drainage and aesthetics. She asked P&Z staff to research Wilton's regulations and consider the other ideas brought up here for a future draft text amendment proposal.

Ms. Mozian suggested to consider not allowing clear cutting to commence until a Zoning Permit is obtained.

Ms. Young said staff will look into moving this proposal from §31 (Regulations Applying to All Districts) to §37 (Sediment and Erosion Control Regulations).

Ms. Dobin wrapped up the topic and planned for it to be continued early in 2022.

Ms. Dobin read Agenda Item #2 into the record regarding expanded outdoor dining regulations. She explained that there are temporary regulations in place from Governor. The P&Z Regulation Revision Subcommittee is seeking comments about what worked and what should change with respect to the temporary state regulations.

Ms. Young, P&Z Director, explained that Special Act 21-3 allows flexible zoning regulations through March 2022. We don't know what will replace that, if anything, from the Governor. We also don't want to leave restaurants high and dry. Special Act 21-3 didn't cover public

street right-of-way. The Board of Selectman (BoS) is responsible for activities on Town property via pop up dining guidelines.

Ms. Dobin added this topic to her list to discuss with First Selectwoman Jen Tooker. The Zoning Regulation regulates private property; permission to use town property must come from the BoS.

Mr. Cammeyer said he is in favor of outdoor dining and seeing what we need to do to extend it.

Mr. Bolton said outdoor dining is huge for the survival [of restaurants], character, etc. He acknowledged issues near Railroad Place. He wants to ensure continued viability for outdoor dining.

Mr. Levey said the Commission needs to listen to restaurateurs to learn their experiences under the temporary regulations. Outdoor dining has really enhanced the community. He noted that it takes up parking, but the Town should make every effort to try to keep outdoor dining. He wants input about what can be done better and issues that can be addressed.

Ciara Webster, who is in the process of opening a restaurant on Main Street, wants to see how this discussion progresses. She said to be cognizant of restaurants that don't have access to outdoor dining because the regulations will affect their finances.

Ms. Dobin asked staff to explore draft regulations on this topic sooner rather than later.

Ms. Perillie read an email received from the restaurant owner (Tutti's, 595 Riverside Ave) regarding outdoor dining regulations.

Ms. Dobin read Agenda Item #3 into the record, discussion of a draft text amendment regarding organized non-team activities in DOSRD 2.

Ms. Dobin wanted to start by reviewing what regulations state currently.

Ms. Perillie, Deputy P&Z Director, read and summarized from the relevant Zoning Regulations in §40 regarding DOSRD 2 purpose and permitted uses.

Ms. Dobin stated that the organized activity prohibition is an issue. She pointed to an email from Jen Fava, Parks and Recreation Director, to demonstrate that there's a desire for organized activity in DOSRD 2 parcels (such story time, guided hikes, trail walking, painting, yoga, etc), but not necessarily team sports. She referenced an email from Cathy Walsh, former P&Z Commissioner, which said the regulations weren't intended to prohibit these activities. Ms. Dobin said the language adopted does prohibit organized activity, which is limiting for access and utilization of DOSRD 2 parcels.

Mr. Lebowitz said the time has come to rethink the definition [of DOSRD 2] that has encumbered Barons South to reflect changing attitudes towards utilizing open space.

Ms. Young, P&Z Director, concurs with Ms. Walsh's email about the intent of the regulations. Any future revisions should be explicit about what is/is not permitted. The activities Ms. Dobin described don't sound intense/objectionable, but members of the public can offer their opinions.

Mr. Cammeyer said he is a big fan of being active. P&Z should let people be active together. There is a need to take a look at this DOSRD 2 topic. The regulations could potentially let 15 people take a yoga class outdoors. He's leaning towards allowing more recreation. He stated it should be a goal to get kids outside and everyone should be able to enjoy outdoor space in town.

Mr. Cohn said he likes the idea of being able to use open space in a more productive way.

Mr. Bolton added that Covid-19 restrictions make this topic more pressing.

Mr. Levey agrees with the other Commissioners.

Ms. Mozian, Conservation Director, asked: which properties are zoned DOSRD 2 today?

Ms. Perillie responded that Barons South and Riverside Park are zoned DOSRD 2.

Ms. Mozian suggested adding guided nature walks to the list of potential uses.

Ms. Dobin agreed. She wants to remove prohibition of "organized" activities. All organized activities are not the same (team/ non-team distinction).

Ms. Mozian asked about a prior proposal for a miniature golf course.

Ms. Dobin responded that mini golf is not under consideration to allow.

Ms. Perillie read the email from Parks & Recreation Director Fava to the Subcommittee on this topic, dated 12/6/21.

Wendy Crowther, Westport resident, said she has been an avid defender of public spaces in DOSRD zones. She could support these slight changes to allow the types of programs mentioned here. She cautioned that it's a slippery slope so wording would need to be careful and explicit. She suggested to consider mentioning work teams [in the regulations] which would improve the park, clean it up, and add plantings.

Ms. Dobin said that P&Z Commissioners and staff can come up with a draft and she encouraged further participation from the public to get it right.

Architect Bill Achilles said he is in full support of the attempted changes, particularly for Barons South. Mr. Achilles did a study of Barons previously. He said it's an under-utilized site. The Town should allow some types of uses which would make it more accessible.

Ms. Dobin directed P&Z staff to take a stab at new language and provide a list of example activities. Then the Subcommittee can receive comments at a future meeting.

Ms. Dobin read Agenda Item #4 into the record, regarding the Zoning Regulations retail use prohibition above the 1st floor downtown and noted an overlapping issue of 10,000 SF floor size limits.

Ms. Young, P&Z Director, described that the 2nd floor retail prohibition has been on the books for decades. She said the prohibition was probably a way to control demand for parking at the time. The Commission should evaluate if it still makes sense. The Town doesn't desire tenant vacancies. Some stores also want to expand. The 10,000 SF size limit was adopted in 2015; the resolution discusses that the Commission hoped to preserve Mom + Pop stores by excluding big box stores. Big box stores have negative connotations but there are national

retailers on Main Street that are popular and have a regional draw. She thinks it's timely to reconsider that regulation. If the Commission is worried about change, it might seek ways to limit the change or make applications subject to Special Permit approval.

Ms. Dobin said she thinks permitting 2nd floor retail would help attract smaller tenants and also provide space for existing tenants to expand.

Architect Rick Hoag agreed with the idea that 2nd floor retail opens up opportunities. New retailers might be attracted to lesser rent on a 2nd floor. First floor space tends to be more expensive due to visibility/accessibility. He is confused by the connection to parking because restaurants are allowed upstairs but are a more intensive use than retail. He said that downtown operates well because of the mix of tenants, so cars stay put once parked. He thinks restricting land use through parking requirements is becoming outdated. This opens the door for reconsidering upstairs retail, which could add to the downtown's vibrancy. It helps business owners to have the 2nd floor option available. Regarding the 10,000 SF regulation, Mr. Hoag said no-one can create these tenancies now due to the regulations, but there are some pre-existing spaces. The Zoning Regulations therefore limit the use of existing buildings that are over 10,000 SF. He doesn't see why Westport would restrict size of a tenant, although he acknowledged it may be desirable to restrict certain uses.

Ms. Dobin responded that the original regulation was probably to prevent something like a dollar store from opening.

Mr. Hoag responded that market forces should control that. Big retailers have specific site needs. Bix box retailers would rather be somewhere other than downtown.

Ms. Dobin worried that the prohibition keeps experiential uses such as a climbing gym from coming downtown, which could drive utilization. Current zoning rules suffocate that.

Mr. Achilles said he's in favor of trying to change the regulations to allow 2nd floor uses in the Business Center District (BCD) and other areas. Some of his clients have had vacant 2nd floors because of the retail restrictions. He tried unsuccessfully to amend these regulations years ago. He suggestion that perhaps the Commission could consider also allowing other uses like medical on 2nd floors and revisit density restrictions for residential uses.

Ms. Dobin said she is not inclined to complicate an amendment by adding other uses to this discussion. She wants to make it easier for people to understand. She's open to considering other uses in the future. She noted that parking is already limited downtown.

Mr. Bolton said he has no problem with the principal goal of this discussion but thought that retailers should be considered on a case-by-case basis; He's not in favor of a one-size-fits all solution.

Ms. Dobin asked for clarification if Mr. Bolton is referring to using Special Permits?

Mr. Bolton responded affirmatively. He wants to focus intensively on each specific application rather than broad policy.

Mr. Lebowitz said he thinks these regulations can evolve. The fears of the past have been proven to be overblown. – Best Buy isn't looking to open downtown, for example. But other stores could if the regulations allowed it. The regulations shouldn't be overly prohibitive. He

explained that Amazon is coming to town, whose model is to never build new, but instead look for places with a large-enough building that they can renovate. The net result is that it's not a new big box store. There are many retailers that could do something similar in Westport's business district. The time has come to reconsider the square footage rules and 2nd floor limitations and bring the regulations up to date.

Mr. Hoag followed that it's important to consider BCD and BCD/H (Historic) together. A historic designation shouldn't be a limiting factor.

Ms. Dobin added that a lack of ADA compliance was brought up in the past.

Ms. Young said there were claims about setting businesses up for failure with respect to ADA compliance. She asked Mr. Hoag to respond.

Mr. Hoag replied that retail encompasses lots of uses. Historic buildings that are non-compliant already exist, so the regulations shouldn't prevent new tenants where someone is already operating. Also, it shouldn't be a zoning issue to worry about ADA compliance. The ADA code is more of a Building Dept. issue. Mr. Hoag also pointed out that downtown Westport has interesting locations that are accessible on 2nd floor from street level.

Ms. Dobin asked staff to draft a text amendment to permit 2nd floor retail and to permit stores over 10,000 square feet pursuant to Special Permit approval.

Ms. Young answered that staff will look into it.

Mr. Achilles offered to assist with any amendment proposal that staff puts together by providing architectural expertise. Mr. Achilles also said that what Mr. Hoag said about the ADA building code is important – the amendment should minimize conflict/overlap between P&Z and the Building Department.

Mary acknowledged that Mr. Hoag pointed out that restaurants are allowed above the 1st floor. She said that medical use is permissible above the 1st floor as well, despite higher parking standards. Retail seems to have been left behind and she's confident that the time has come to re-evaluate. She confirmed that P&Z staff will keep the Building Department engaged on revisions to Zoning Regulations.

Ms. Dobin recapped the meeting and adjourned at 1:41 pm.

A full audio recording of the meeting is archived and available on the Town of Westport's website, [here](#).

Respectfully Submitted by Michael Kiselak on December 10, 2021.