



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

Minutes

Planning and Zoning Commission's

Zoning Regulation Revision Subcommittee

Wednesday, January 5, 2021 at 12:00pm

P&Z Commissioners in Attendance:

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

Public in Attendance

Matt Mandell, RTM P&Z Committee Chair	Nancy Diamond, Arts Advisory Committee
Chris Tait, RTM District #1	Kathleen Bennewitz, Arts Advisory Comm.
Jimmy Izzo, RTM District #3	Monica Buesser, Westport Tree Board
Richard Lowenstein, RTM District #5	Holly Betts, Senior Center
Ellen Lautenberg, RTM District #7	Jonathan Steinberg
Wendy Batteau, RTM District #8	Ken Stamm
Lori Church, RTM District #9	Ian Warburg
Nancy Kail, RTM District #9	Thea Osseiran
Amanda Dorin	Gretchen Webster
Dave Lowry	David Wright
Suzanne Tanner	Izabela Uznanska
Johnny Schwartz	Melissa Ceriale
Mark Donovan	Ben Meyer
Rob Haroun	Lock Pawlick
David Waldman	Wendy Crowther
Richard Redniss	Bill Achilles
Christina Gordon	Rick Hoag

Town Hall Staff

Mary Young, Planning and Zoning Director
Michelle Perillie, Deputy Planning and Zoning Director
Michael Kiselak, Planner
Ben Sykas, Tree Warden
Colin Kelly, Conservation Department

Agenda

1. Discussion of draft text amendment regarding preservation of mature trees.
2. Discussion of draft text amendment to permit organized non-team activities (for example, outdoor painting classes, organized hikes and yoga classes) in DOSRD 2.
3. Discussion of draft text amendment to modify prohibition on single-tenant occupancy exceeding 10,000 SF in the BCD and BCD/H in downtown Westport.
4. Discussion of draft text amendment to remove prohibition on Retail/Service uses above the 1st floor in the BCD and BCD/H in downtown Westport.
5. Discussion of exempting Art from Coverage calculations.

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

Ms. Dobin explained that discussion of this topic was initiated at the previous subcommittee meeting on 12/08/21. The goal is to preserve mature trees in a way that doesn't interfere with personal property but prevents drainage, soil, and erosion issues.

Mr. Kiselak, staff Planner in the Planning and Zoning Department, provided an overview of the draft text amendment proposal, dated 12/29/21, published with the meeting agenda.

Ms. Dobin talked about exploring flexibility in taking down trees that conflict with development. She asked Ben Sykas, Westport's Tree Warden, for his comments.

Mr. Sykas said that the 12" designation for "Mature Trees" is a good size to start with. He suggested incorporating the national industry standard for diameter at breast height (DBH) at 4.5ft above ground. He suggested that all non-invasive species should be included in the Mature Tree definition – it's important to maintain species diversity because of pests/diseases. Mr. Sykas said he would consider an inch-for-inch replacement for each Mature Tree taken down, and more for trees over 2ft diameter, to maintain canopy coverage. Westport is losing large trees and the result is too many small/medium trees. He suggested that 75% or 80% of planted trees be truly native, but others be naturalized species to account for urban/suburban conditions. Finally, Mr. Sykas said the proposed ANSI construction protections would go a long way especially when done up-front.

Mr. Kelly, of the Conservation Department, supports using the industry standard DBH definition as suggested by Mr. Sykas. He also noted that "caliper" should be used to reference nursery stock with respect to restoration planting, which is a standard measurement 12" above ground to account for root flare. Mr. Kelly said he would be worried about someone removing a 20" tree and replacing with arborvitae or something else that doesn't provide the same value as the tree taken down. He said there should be further discussion about how to specify replacement tree species. He agreed with Mr. Sykas about the ANSI construction standards.

Mr. Lebowitz, P&Z Commissioner and Subcommittee member, spoke with two constituencies in mind – professionals (developers and contractors) and non-professionals (homeowners). Mr. Lebowitz wanted to ensure that non-professionals would have a clear

path even though they don't navigate Zoning Regulations for a living. He asked if they'll understand the proposed regulations.

Mr. Cohn, P&Z Commissioner, said he is more interested in hearing from the public. He said the Subcommittee is doing the right thing by looking to prevent excess clear cutting.

Mr. Cammeyer, P&Z Commissioner and Subcommittee member, said he wants to hear from the public. He does think we need to replace trees and wants to hear what works for people.

Mr. Bolton, P&Z Commissioner, asked if this is a discussion about the ability of homeowner to use their property to its highest and best use? Is this a discussion about privacy, obstruction of views? Does the proposal include anything about air rights?

Ms. Dobin responded that there are no air rights issues. The discussion is to explore the line between personal property rights and community good. There are negative impacts to soil erosion, runoff, aesthetics, and the ecosystem. Property owners do have fundamental rights for the use of property. The Subcommittee is trying to find that intersection.

Mr. Bolton asked what guidance was sought to create the draft proposal.

Ms. Dobin explained that staff researched what other municipalities do at the previous subcommittee meeting (12/8/21) and presented findings.

Mr. Bolton asked about conservation easements; Ms. Dobin responded that they are not applicable.

Ms. Falk, P&Z Commission Alternate, said this discussion has multi-level implications. Consideration should be given to when trees get bigger and drop their canopy. She suggested to think about the opportunity to encourage certain desired types of trees. Overall, she said this is a positive thing for Westport.

Ms. Dobin opened the floor for the public to provide input.

Mr. Izzo, a resident and RTM District #3 representative, said he was more in-tune with Mr. Lebowitz and that homeowners shouldn't be required to get a permit to cut down trees on their property. He thinks the real issue is to work with developers at the on-set before they clear cut.

Mr. Stamm, resident, said he doesn't like taking down trees but thinks the draft is flawed and would over-burden homeowners. He suggested certain exemptions for homeowners. He said he would submit his comments in writing.

Mr. Haroun, a developer, said he is not in favor of tree regulations beyond current regulations for wetlands, which work well. He thinks the proposal is an overreach and would have adverse effects. He said drainage can be addressed in other ways.

Ms. Batteau, resident and RTM District #8 representative, spoke in support of the proposed regulation. She supports Ms. Falk's comments about certain types of replacements.

Ms. Pawlick, resident, spoke in favor and said there are benefits to keeping Mature Trees. She hopes we can move in the direction of protection.

Mr. Lowry, resident, said Ms. Pawlick summed up his thoughts about biological benefits.

Ms. Ceriale, resident, said it's a sticky issue about regulations hampering development, but doesn't want to see more clear cutting. She said it's important to take this on and said she will submit notes with comments/suggestions.

Ms. Buesser, Chair of the Westport Tree Board, spoke in support of tree preservation and replacement. She thinks there could be opportunities for off-site tree replacement elsewhere in Town. She thinks homeowners need guidance regarding tree preservation which can be provided through the permitting process.

Mr. Lowenstein, resident and RTM District #5 representative, agreed with the distinction between individuals and developers. He has noticed properties in town completely clear cut. He asked how the regulation would affect a problematic tree on his own property as an example.

Ms. Dobin noted that the proposal included an exemption for safety concerns. She added that it could be helpful to have a tree FAQ similar to what was created for the ADU regulations. She directed staff to take in the comments for a future draft.

Ms. Dobin read Agenda Item #2 into the record about DOSRD #2.

Ms. Dobin explained that the idea behind the proposed change is to permit wider utilization of the parks and allow everyone from the Senior Center to the Parks and Recreation Department to schedule organized activities (except team sports).

Mr. Cohn said he thinks this amendment will be appreciated and useful.

Mr. Cammeyer echoed Mr. Cohn.

Ms. Crowther, resident, said she feels this proposal might be vulnerable to creep of allowable activities.

Ms. Dobin said that certain activities like yoga are not "passive". She's open to other suggestions. She didn't want a list of specific exemptions to the "passive" requirement because it's hard to be exhaustive.

Ms. Crowther suggested re-ordering the amendment and separating "passive" from "mostly".

Ms. Dobin said the word passive is the problem, so the proposal qualifies it with "mostly."

Ms. Crowther said she may have a different definition of what "passive" entails. She also said it seems like pickleball is missing from the description of team sports.

Ms. Betts, Senior Center Program Manager, said there is potential at Barons South for activities. She supports activities and temporary programming such as croquet. She said it's important to be able to use Barons South and the seniors would appreciate it.

Ms. Dobin said there's a need to think about certain activities that can be considered team/competitive such as croquet.

Ms. Batteau stated that hiking is permitted in Barons South currently. She expressed concern that the proposal doesn't mention tennis or pickleball or anything involving courts. She

thinks the language could be improved and wants to avoid construction of courts and polluting/destructive activities.

Ms. Dobin responded that organized activities, including group hiking, are not permitted based on the current regulations, which makes it impossible for the Senior Center and Parks and Rec. to have programming in DOSRD #2 parks. She doesn't want to simply have P&Z give an interpretation of the current regulations to say certain things are allowed.

Mr. Mandell, RTM P&Z Committee Chair, said he thinks "passive" just needs to be defined. Defining certain words could control the regulation and make it work. Parks and Rec. and the Senior Center should be allowed to use the property if there's no impact. Mr. Mandell thought the proposal is on the right course and better than building things on the park.

Ms. Tanner, resident, asked about limitations to group sizes. She's concerned about differences between Barons South and Riverside Park.

Ms. Perillie clarified that only Barons South is DOSRD #2. Riverside Park is DOSRD #3.

Ms. Dobin asked the other Commissioners how they'd like to move forward.

Mr. Cohn said he would rather have the Commission work on the amendment and fine tune it as needed.

Mr. Cammeyer said he has no comments until he hears what others have to say.

Mr. Bolton said a lot of the comments from Agenda Item #1 regarding trees can be applied to this topic as well, especially those related to the environment. He doesn't think this is ready for formal discussion with the full Commission as written; it needs to be further refined.

Ms. Falk agreed with Mr. Cohn. Conceptually she thinks the idea's time has come and can be tightened up by Commission.

Ms. Dobin was in support of the amendment going to the full Commission.

Mr. Cohn agreed.

Mr. Bolton reiterated that he doesn't think it's ready but is not opposed to the idea either.

Mr. Cammeyer supported taking the proposal to the Commission. Minor tweaks can be made later.

Mr. Lebowitz said the time has come to move to the Commission. He thinks the Subcommittee identified good tweaks to the rules while being cautious enough. He trusts staff to be conscientious of what uses are allowed.

Ms. Falk agreed that it's ready to go to the Commission.

Ms. Dobin directed P&Z staff to add the topic to the upcoming (1/13/22) work session agenda.

Ms. Dobin read Agenda Item #3 into the record, to modify prohibition on single tenant occupancy of 10,000 SF or more in the Business Center District (BCD) and BCD/H (Historic).

Ms. Young, Planning & Zoning Department Director, explained that the proposed amendment looks back to 2015 when the restriction of 10,000 SF was adopted. Some tenants/landlords have not benefited and have been forced to move elsewhere away from the BCD. The Zoning Regulations currently allow tenants over 10,000 SF everywhere else in Westport. The proposal is to replace the downtown 10,000 SF prohibition with a requirement for Special Permit approval. There are 55 properties in total downtown between the BCD and BCD/H. The proposed change would impact about 20 of them.

Ms. Dobin said the proposed requirement for Special Permit approval initially sounded good to give assurances about prospective tenants, but it may have unintended consequences. Ms. Dobin acknowledged that, under current regulations, some retailers looking to locate in downtown Westport go through workarounds because of the size limitations.

Mr. Lebowitz said the existing regulation stands in the way of growth. He's in favor of moving this forward and he thinks it'll improve town.

Mr. Cammeyer said he is in favor of the proposal.

Mr. Cohn thought it's time to embrace any opportunities to get retailers, especially of an experiential type, to come to town. He said to make sure not to penalize new tenants as mentioned in written comments submitted by Rick Hoag.

Ms. Dobin asked the other Commissioners about the Special Permit requirement.

Mr. Lebowitz said he would like to get rid of the Special Permit component. He said it's unwarranted and hasn't been shown to be effective.

Mr. Bolton deferred the question on the Special Permit. He said Main Street has to maintain certain characteristics to represent what Westport is about. He wants the 2015 amendment investigated to understand why the prohibition was adopted. He said the Grand List is an important consideration and thinks this proposal is ready to move forward.

Ms. Falk withheld her opinion because she felt she didn't have enough background knowledge yet on the topic.

Ms. Dobin opened the floor for members of the public to provide comments.

Mr. Waldman, a developer, said that the current prohibition was put in place as a roadblock in 2015 by the previous Commission. He thinks the marketplace will dictate what development happens downtown. He said existing buildings shouldn't be penalized. He's in favor of removing the 10,000 SF restriction. He said there's no need for Special Permits because of the high-end nature of the area. Landlords will gain flexibility.

Ms. Dobin clarified that this current proposal is not targeted at anyone in particular.

Mr. Tait, resident and RTM District #1 representative, said Main Street is an asset and suggested to keep in mind what we want to keep downtown and what adds value to Westport long term.

Ms. Dobin pointed out that the Village District Overlay (VDO) zone does provides protections for aesthetics of the downtown area and that exterior facades are reviewed by the Joint Commission.

Mr. Mandell, speaking on behalf of the Chamber of Commerce, said downtown is different than the Post Road and elsewhere. The *2015 Downtown Westport Master Plan* charettes identified the loss of mom-and-pop shops as an issue. He said the Chamber finds mom-and-pops are more invested in Town and easier to deal with than national chains. He posed a question about the benefits of single tenants vs. splitting up building frontages. He said he thinks downtown is already vibrant and doesn't want national chains to push out small businesses. He said the proposal is on the right track but cautioned about losing gains made since 2015, including 22 new businesses that have opened downtown. He thinks Special Permits might be good for the time being.

Ms. Dobin said the goal is to find balance in our regulations for change.

Ms. Lautenberg said she agrees with Mr. Mandell. She has concerns about the proposed amendment. She doesn't want to limit the ability of smaller stores to come in.

Mr. Wright, a downtown property owner, is in support of the proposal and submitted a letter in writing. He said he's not in support of Special Permits. He said big box stores locating in the BCD aren't a big concern and the character and beauty of downtown are maintained in other ways.

Mr. Meyer, resident, said it's good to give landlords flexibility, so he takes no issue with the proposal. He appreciates Matt Mandell's comments about diversity of stores and vibrancy.

Mr. Hoag, an architect, said he doesn't understand the point of controlling the use within existing buildings. He said vibrancy downtown comes from mix of creative retailers, whether national, local, etc. He said landlords would rather lease smaller spaces because it's more profitable, so controlling use by size doesn't make sense. He disagreed that national retailers push out mom-and-pops. He concluded that a Special Permit requirement would make it impossible to market a space due to uncertainty about whether a tenant can get approval. He also worried that the criteria for Special Permit approval will be too subjective.

Ms. Dobin responded that different retailers have different impacts, such as traffic impacts, and the Commission's discretion could therefore come into play with a Special Permit.

Mr. Mandell clarified that he's worried about consolidation of smaller spaces.

Mr. Cohn said he supports getting rid of the 10,000 SF restriction while maintaining Special Permit discretion.

Ms. Dobin said the Special Permit requirement can be discussed at the full Commission level.

Mr. Lebowitz said the proposal would make a positive change based on what has happened since 2015. The regulations can always be changed again if needed. He said he wants to move the topic forward to the full Commission.

Mr. Cammeyer said he wants to move forward to the Commission level.

Ms. Dobin said the topic will be moved forward to a Work Session. She asked Ms. Young to consider if the Special Permit part can be changed without triggering the need for additional legal notices once the topic goes to a public hearing.

Ms. Young agreed to discuss the question with the Town Attorney's Office.

Ms. Dobin read Agenda Item #4 into the record, regarding restrictions on retail uses above the 1st floor in the BCD and BCD/H.

Ms. Young explained that the prohibition in question has been in place since the 1990's. It was originally combined with additional prohibitions – most have since been repealed, except for retail. She said retail above the 1st floor will provide opportunities to small businesses because of lower market rent. There is currently significant vacancy downtown and the goal is to fill it.

Mr. Lebowitz said the retail landscape has changed and continues to change post-pandemic. He wants to craft a regulation that brings vibrancy downtown. He used Savvy + Grace as an example of organic growth. He said he would like to hear reasons against the proposal.

Ms. Dobin added that Mr. Cohn had to leave the meeting but gives his support for the change.

Mr. Cammeyer agreed with Mr. Lebowitz and it's important to be smart but flexible.

Mr. Bolton said change is good but potential cascading effects need to be understood.

Ms. Falk noted that the pandemic has changed the rental market. There's a need to embrace concepts of office and workspace sharing. She said she supports the change.

Mr. Mandell said the Chamber of Commerce supports the proposed change and supports retail uses locating on the 2nd floor. He said to consider the effects on pricing for 2nd floor spaces for other uses such as restaurants.

Mr. Tait said to make sure the changes are fully thought through because it might take time to undo/change the regulations later because of lease terms.

Mr. Achilles, an architect, said he has clients for whom their 2nd floor space is unrentable because of the retail restriction. He fully supports the amendment.

Mr. Wright gave his support. He added that offices are allowed on the 2nd floor already and restaurants are intensive with respect to parking and traffic. He said 2nd floor space is more affordable and makes sense for some small businesses, plus some buildings have 2nd floor access directly from street grade (Elm Street).

Ms. Dobin said that past efforts to micromanage downtown have backfired. The Commission needs to stay flexible because trends change and will keep changing.

Ms. Dobin, Mr. Lebowitz, and Mr. Cammeyer supported moving the topic to a Work Session.

Ms. Dobin read Agenda Item #5 into the record, regarding art being exempted from coverage calculations.

Ms. Perillie explained that anything with location on the ground counts towards coverage (except for specific exemptions provided for in the Zoning Regulations). Ms. Diamond of the Westport Arts Advisory Committee has asked for an exemption for art from coverage. She's developed a definition for "art" to accomplish her goal.

Ms. Diamond, Chair of the Westport Arts Advisory Committee (WAAC), spoke and said that her committee wants to bring more art to Westport, such as more sculptures in public areas. Possible locations are limited by Zoning Regulations. For example, a variance was needed for a sculpture at the Westport Library. The Town has no place to easily put art that has been/could be donated. She wants to make the process smoother for growing Westport's artistic reputation.

Ms. Bennewitz, who serves on the WAAC, said she has been looking closely at other towns in Fairfield County. Their proposal is based on that research.

Mr. Cohn said he wants to support WAAC and move this forward to support the arts.

Ms. Young agreed that there was a lengthy process to get the library art approved because it's in a residential zone. This approach proposed herein may be a band-aid for now, but she said the Commission should look long-term to create a zoning district that addresses specific uses such as the library and schools.

Mr. Lebowitz said he's ok with moving this topic forward.

Mr. Cammeyer said he's in favor of the proposal.

Mr. Bolton said he's in favor of the proposal.

Ms. Falk said she's in favor of the proposal.

Ms. Batteau, resident, said she supports the proposal.

Mr. Mandell asked how big of an art piece is acceptable?

Ms. Bennewitz responded that scale is a part of the larger guidelines of the WAAC.

Ms. Dobin said she thinks that P&Z shouldn't be arbiter of what art goes where. She trusts others such as the WAAC to site art appropriately. The Committee is in a better position to make that call than P&Z.

Mr. Lebowitz said he thinks this proposal "paints a good picture" and he is in support of moving this to a work session.

Mr. Cammeyer said he is also in support.

Ms. Dobin adjourned the meeting at 2:47 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 14, 2022.