



Town of Westport
Planning & Zoning Commission
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MEMORANDUM

TO: Whom it May Concern

FROM: Mary Young, Planning and Zoning Director

DATE: February 16, 2010, *Updated 8/2/21*

SUBJECT: §32-18, Historic Residential Structures, Zoning History

The following is a chronology of the adoption and modifications to §32-18, Historic Residential Structures:

- 1/23/07 The Zoning Board of Appeals granted in part and denied in part Case #6584, wherein use variances were requested for renovations to existing accessory buildings at 161 Cross Highway, the location of the first gas station in Westport. The hardship offered by the applicant was "the historic nature of the accessory buildings." The Town Attorney advised ZBA members the Connecticut courts have found the desire to preserve a historic structure alone does not create hardship. ZBA members suggested the appropriate forum to bring the application was in front of the Planning and Zoning Commission alongside a text amendment giving the Commission authority to expand allowable uses of existing historic buildings and relax other standards, see attached ZBA resolution and meeting minutes from Case #6584.
- Spring 2007 A subcommittee comprised of members from the Planning and Zoning Commission and Historic District Commission formed to create regulations to grant authority to the Commission to expand allowable uses of accessory buildings and to relax existing zoning standards to provide incentives to preserve historic buildings. Members of the subcommittee included:
- Morley Boyd, Chairman, Historic District Commission (HDC)
 - Margaret Feczko, Vice Chairman, HDC
 - Eleanor Lowenstein, Vice Chairman, Planning and Zoning Commission (P&ZC)
 - David Press, P&ZC member
 - Howard Lathrop, P&ZC member
- 12/13/07 Adoption by the Planning and Zoning Commission of Amendment #574, submitted by the Planning and Zoning Commission, that established §32-18, Residential Historic Structures. The effective date of the amendment was 1/21/08; see available text, staff comments, and resolution of approval/Res. #07-074.
- The resolution identified the following regulations were modified and/or created:
- added §11-2.3.12, Residential Historic Structures;
 - added §11-2.4.14, Residential Historic Accessory Structures;
 - added §32-18, Residential Historic Structures (RHS) to allow the Planning and Zoning Commission to grant a Special Permit to authorize setback, height and coverage incentives to principle or accessory structures, and to authorize customary home occupations and accessory apartments in accessory structures, in those circumstances where applicable zoning regulations have the practical effect of discouraging the preservation of historic buildings and historic accessory structures

The resolution identified the amendment was adopted for the following reasons:

1. *"The Planning and Zoning Commission finds the amendment is consistent with Westport Zoning Regulations.*
2. *The Planning and Zoning Commission finds the amendment is consistent with the 1997 Town Plan of Conservation and Development that promotes the preservation of historic structures.*
3. *The amendment is consistent with the Secretary of the Interior Standards for Historic Preservation.*
4. *The amendment was recommended by the Historic District Commission."*

7/24/08

Adoption by the Planning and Zoning Commission of Amendment #582, submitted by the Planning and Zoning Commission, that modified §32-18, Residential Historic Structures, and other miscellaneous changes. The effective date of the amendment was 8/25/08; see available text, staff comments, and resolution of approval/Res. #08-046.

The resolution identified §32-18 was modified as follows:

- §4-2 to delete reference to the zoning map revision date of 8/17/75;
- §11-2.4.8 (h), to modify the requirements for accessory structures pursuant to Section 32-18 (Historic Residential Structures);
- §11-2.4.10 to modify this section for accessory structures pursuant to Section 32-18 (Historic Residential Structures);
- §11-2.4.12B (b) to modify this section to include non-profit corporations;
- §31-5 to eliminate a section on setbacks from high pressure gas lines;
- §34-11.7 to allow porous paving systems in Non-Residence Districts;
- §42-3.2 to require Certificates of Mailing instead of stamped business envelopes;
- §44-1.2.2 to require Certificates of Mailing for site plan and special permit applications;
- §52-4.7.2 to require Certificates of Mailing for subdivision applications;

The resolution identified the amendment was adopted for the following reasons:

1. *"The Planning and Zoning Commission find the amendment is consistent with Westport Zoning Regulations.*
2. *The Planning and Zoning Commission finds the amendment is consistent with the 2007 Town Plan of Conservation and Development that promotes the preservation of historic structures.*
3. *The amendment is consistent with the Secretary of the Interior Standards for Historic Preservation.*
4. *The amendment makes the mailing requirements for applications consistent with State Statues."*

10/23/08

Adoption by the Planning and Zoning Commission of Amendment #585 submitted by Barr Associates that modified §32-18, Residential Historic Structures. The effective date of the amendment was 12/1/08; see available text, staff comments, and resolution of approval/Res. #08-064. The resolution identified §32-18 was modified as follows:

- §32-18.1, to amend the purpose statement of §32-18 by including existing special permit uses and allowing the Commission to grant relief on parking and landscaping requirements;
- §32-18.3 (c); to add the word “structural” to the requirements of the preservation easement;
- §32-18.4 (c); to allow the Commission to modify parking and/or landscaping requirements, provided the number of existing parking spaces shall not be reduced;
- §32-18.5 (a); to modify to be consistent with the changes in §32-18.4 with respect to parking and landscaping;
- §32-18.5 (c); to add a new section allowing limited office use for existing Special Permit uses;
- §32-18.6 (b); to add the word “structural” to the requirements of the preservation easement;
- §32-18.7.1; to add a requirement to preserve the structural integrity of the historic structure;
- §32-18.9.3; to add Special Permit uses to the annual affidavit requirements;
- §32-18.9.4; to add a new section that allows for limited office use in accessory structures, through a site plan & special permit approval, provided that the properties 1) have frontage on an arterial street, 2) adjoin a commercial district and 3) and are located within 500 feet on a municipal parking lot. Healthcare, medical offices, banks and retail are excluded and such uses can only occupy up to 5,100 square feet or 60% of the floor area within the building or 20% of the floor area of the property, which ever is less.

The resolution identified the amendment was adopted for the following reasons:

1. *“The Planning and Zoning Commission finds the amendment is consistent with Westport Zoning Regulations.*
2. *The Planning and Zoning Commission finds the amendment is consistent with the 2007Town Plan of Conservation and Development.*
3. *This amendment will facilitate the preservation of historic structures.”*

10/20/09

Amendment #603 submitted by the Planning and Zoning Commission. The application was subsequently **withdrawn** on 12/4/09 to allow for further text revisions and coordination between the Planning and Zoning Commission and Historic District Commission. The following modifications were proposed to §32-18, as listed in the Statement of Purpose dated 10/20/09:

- §32-18.2.1 (e); to add a new section that would give the Planning & Zoning Commission the final decision over eligibility. The reason for this change is because these approvals are granted as part of a special permit; the Commission must be ultimate decision which should not be delegated to another agency.
- §32-18-.2.1 (f); to add a new section that requires any application must occur within a building which is deemed a historic structure even if there are other historic structures on the property. The reason for this change is it avoids this regulation being applied to structures that do not meet the definition of historic even if they are located on a property that contains other structures which are deemed historic.

- §32-18.3(c); to modify this section to indicate that the required preservation easement shall cover all structures on the property. The reason for this change is because by placing the preservation easement upon all structures it keeps them in context with the historic nature of the property as a whole.
- §32-18.3(d); to modify this section to indicate that only applications where exterior changes are proposed shall require a joint meeting of the HDC and ARB. The reason for this change is it will eliminate the need for a meeting where there are no design elements to be considered.

12/10/09 Adoption by the Planning and Zoning Commission of Amendment #602 submitted by Attorney Michael T. Bologna, that modified §32-18, Residential Historic Structures. The effective date of the amendment was 1/11/10; see available text, staff comments, and resolution of approval/Res. #09-090.

The resolution identified §32-18 was modified as follows:

- Deleted §32-18.9.2 (b), language that requires the main dwelling unit or the historic accessory structure be occupied by the principal owner.
- Added language to §32-18.19.3 requiring annual certification that non-resident owners have inspected and performed the necessary preservation maintenance

The resolution identified the amendment was adopted for the following reasons:

1. *“That the proposed amendment is consistent with the 2007 Plan of Conservation and Development as it will help the preservation of historic structures.*
2. *This amendment expands the potential number of historic properties that could be preserved.*
3. *This amendment is consistent with the Westport Zoning Regulations because it is consistent with the purpose statement of §32-18, Historic Residential Structures.”*

5/13/10 Adoption by the Planning and Zoning Commission of Amendment #611 submitted by the Planning and Zoning Commission, that modified regulations on Home Occupations, including associated regulations contained in §32-18, Residential Historic Structures. The effective date of the amendment was 6/4/10; see available text, staff comments, and resolution of approval/Res. #10-011.

The resolution identified §32-18 was modified as follows:

- §32-18.5(b), to replace reference to Customary Home Occupation with Home Occupation, Level 1 and Home Occupation, Level 2; and
- §32-18.9.1, to replace reference to Customary Home Occupations with Home Based Business and add reference to Home Office, Home Occupation, Level 1 and Home Occupation, Level 2.

10/3/12 Submission of Text Amendment #652 by Coke Ann Cox to modify §32-18, Historic Residential Structures to expand the authority of the Planning and Zoning Commission to grant use relief to allow guest house/tourist home establishments to encourage preservation of historic homes. The application was withdrawn on 2/8/13.

4/30/15 Pre-Application meeting with the Planning and Zoning Commission and perspective buyers of 53 Kings Highway North who requested an interpretation of §32-18.9 of the Zoning Regulations which states:

“Accessory Apartments: one historic accessory structure or portion thereof may be converted to allow the incorporation of one (1) additional dwelling unit on the premises subject to Special Permit and Site Plan Approval in accordance with §43 herein, and all conditions associated with §11-2.4.12 Accessory Apartments except as modified herein...”

Specifically, the property at 53 Kings Highway North has a total of two dwelling units under existing conditions and the applicant asked the Commission whether §23-18.9 permitted or prohibited the conversion of a third building into a 3rd dwelling unit. The Planning and Zoning Commission responded that §32-18 should be interpreted broadly to be inclusive of opportunities for historic preservation; therefore §32-18.9 does not prohibit the creation of a 3rd dwelling unit on the property.

5/21/15 Submission of Text Amendment #693 by Wendy Van Wie to modify §32-18, Historic Residential Structures to expand the authority of the Planning and Zoning Commission to grant both Lot Area, and Lot Shape relief. The application was withdrawn on 9/3/15.

12/10/15 Adoption by the Planning and Zoning Commission of Amendment #701 submitted by Wendy Van Wie to modify §32-18, Historic Residential Structures, to expand the authority of the Planning and Zoning Commission to grant both Lot Area, and Lot Shape incentives to enable subsequent approval of a subdivision application while encouraging historic preservation and protecting historic assets. The location requirements for eligible properties to utilize the Lot Area and Lot Shape incentives are described in §32-18.5(d), and include:

- A. The lot shall be located in the Res AAA, Res AA, or Res A, zoning districts;
- B. The lot shall contain more than one Historic Residential Structure; and
- C. Each new lot created shall contain at least one Historic Residential Structure.

The effective date of the amendment was 1/11/16; see available text, staff comments, and resolution of approval/Res. #15-047.

5/12/16 Adoption by the Planning and Zoning Commission of Amendment #711 submitted by Achilles Architects to modify §32-18, Historic Residential Structures, to further expand the authority of the Planning and Zoning Commission to grant both Lot Area, and Lot Shape incentives to enable subsequent approval of a subdivision application while encouraging historic preservation and protecting historic assets. The location requirements for eligible properties to utilize the Lot Area and Lot Shape incentives are described in §32-18.5(e), and include:

- A. The lot shall be located in the Res AAA zoning district and shall be non-conforming to the minimum lot size requirements;
- B. The lot shall be at least 25,000 GSF in size (0.57 acres); and
- C. One of the new lots shall contain at least one Historic Residential Structure 100 years or older.

The effective date of the amendment was 6/12/16; see available text, staff comments, and resolution of approval/Res. #16-003.

1/12/17 Adoption by the Planning and Zoning Commission of Amendment #722 submitted by Barr Associates, LLC to modify §32-18, Historic Residential Structures, to further expand the authority of the Planning and Zoning Commission to grant both Lot Area, and Lot Shape incentives to enable the preservation of historic residential structures located on property to be subdivided by modifying the existing location requirements in §32-18.5(e). The amendment proposed allowing lots divided by the Saugatuck River, the West Branch of the Saugatuck River or the Aspetuck River to be divided if at least one has an historic structure and the lot meets other requirements in §32-18.5 (e). Members of the Planning and Zoning Commission modified the text by removing the references to any other river other than the Aspetuck River.

7/10/20 Granting by the Planning and Zoning Commission of a request for interpretation to limit the Preservation Easement to only the Historic Accessory Structure for which zoning incentives were requested; rather than applying the Preservation Easement to the entire premises (consistent with past practices) which would have included the Principle Structure which was also Historic. The applicant testified during the hearing that if his request was not granted the building might not be preserved. The Commission also made the following finding:

“This finding should not be construed to mean the Commission has offered an interpretation of how to administer §32-18.6, as the Commission going forward will review each Special Permit request submitted pursuant to §32-18 on its own merits and render a decision based upon the conditions associated with any future applications.”

Granting by the Planning and Zoning Commission of a request for interpretation enabling the Historic Accessory Structure (Barn/Garage) to be used for purposes beyond what is defined in Sec. 32-18.9. The Commission approved use of the structure for a Home Office/Personal Gym/Garage use.

The above interpretations involved activities granted pursuant to Res. #PZ-20-0033 for property located at 113 North Avenue.

9/3/20 Two additional examples of the Commission interpreting their regulations to enable the granting of requests to limit the Preservation Easement to only the Historic Accessory Structure for which zoning incentives were requested. In both cases, the P&Z Staff report confirmed:

“The Commission is authorized to interpret §32-18.6 to limit the Preservation Easement to the Historic Accessory Structure as requested by the applicant if so inclined... §32-18.6 requires any approval for a Historic Residential Structure shall be accompanied by a Perpetual Preservation Easement to ‘preserve the structural and historic integrity of the historic structure or historic accessory structure.’ The Planning and Zoning Commission in 2009 proposed the Preservation Easement shall be interpreted to encompass all buildings located on site, not just the historic structure or historic accessory structure. It is presumed this easement requirement was interpreted broadly so as to ensure the historic structure or historic accessory structure remains compatible with its setting. This interpretation was included in Text Amendment #603 proposed by the Commission in 2009, but the amendment was subsequently withdrawn by the Commission; therefore this interpretation is not listed as a ‘requirement’ in the Zoning Regulations.”

The two examples involved activities granted pursuant to Res. #PZ-20-00470 for property located at 153 Easton Rd. and for activities granted pursuant to Res. #PZ-20-00524 for property located at 69 Kings Highway North.

The Commission's findings when approving both 153 Easton Rd. and 69 Kings Highway North included:

"The Commission further finds the unique history of the property enables a finding the preservation easement required pursuant to §32-18.6 may be limited to the Historic Accessory Structure only, as requested by the applicant.

This finding is consistent with previous findings made in prior decisions to preserve sensitive resources on other properties including but not limited to historic stone walls, and mature trees that have been protected by the Commission by requiring a conservation easement in perpetuity to preserve these resources.

This finding should not be construed to mean the Commission has offered an interpretation of how to administer §32-18.6, as the Commission going forward will review each Special Permit request submitted pursuant to §32-18 on its own merits and render a decision based upon the conditions associated with any future applications."

9/8/20

The Assistant Town Attorney distributed a new Preservation Easement template for dissemination to potential applicants considering utilizing §32-18, and for use by applicants when fulfilling conditions of their approvals requiring the recording of a Preservation Easement.

7/22/21

Adoption by the Planning and Zoning Commission of Text Amendment #794, Effective 8/13/21, submitted by Gloria Gouveia, of Land Use Consultants, to further expand the authority of the Planning and Zoning Commission by adding zoning incentives to encourage preservation of historic, residentially zoned, Principal Buildings, to facilitate expansion of medical uses previously approved by variance by the Zoning Board of Appeals (ZBA), minus any requirements on Home Occupations (residency requirements, limits on number of employees, etc.), and allow expansion of floor area dedicated to Medical use up to 50% of the total floor area of the building, on properties that meet the following criteria:

- A. Must have frontage on a collector or arterial street;
- B. Must adjoin a commercial zoning district, and/or
- C. Must be within 500 feet of a municipal (Town-owned) public parking lot.

Six (6) properties were identified that qualify for the amendment, including:

1. 234 Main St.;
2. 245 Main St.;
3. 251 Main St.;
4. 42 Myrtle Ave.;
5. 1 Saint John Pl.; and
6. 2 Saint John Pl.

The targeted beneficiary was 251 Main Street.

Available attachments

ZBA Case #6584 and meeting minutes dated 1/23/07
Adopted Text for Amendment 574 and Res. #07-074
Staff Comments for Amendment 574
Adopted Text for Amendment 582 and Res. #08-046
Staff Comments for Amendment 582
Adopted Text for Amendment #585 and Res. #08-064
Staff Comments for Amendment #585
Proposed (and subsequently withdrawn) Text Amendment #603 and Statement of Purpose
Adopted Text for Amendment #602 and Res. #09-090
Staff Comments for Amendment #602
Adopted Text for Amendment #611 and Res. #10-011
Staff Comments for Amendment #611
Staff Comments for Amendment #701
Adopted Text Amendment #701 and Res. #15-047
Staff Comments for Amendment #711
Adopted Text Amendment #711 and Res. #16-003
Staff comments for Amendment #722
Adopted Text Amendment #722 and Res. #16-048
P&Z Resolution #PZ-20-0033, for 113 North Ave.
P&Z Resolution # PZ-20-00470, for 153 Easton Road
P&Z Resolution # PZ-20-00524, for 69 Kings Highway North
Preservation Easement template, prepared by the Assistant Town Attorney, dated September 2020
Adopted Text Amendment #794 and Res. # PZ-21-00243