



TOWN OF NEWTOWN
PLANNING & ZONING COMMISSION

MINUTES
REGULAR MEETING
Thursday, January 7, 2021 at 7:00 p.m.

Zoom Virtual Meeting Participation Information

Thursday, January 7, 2021 at 7:00 P.M.

Call-In Number: +1 929-205-6099

Meeting ID: 993 6646 5651 #

Website: <https://zoom.us/j/99366465651>

Present: Don Mitchell, Jim Swift, Corinne Cox, Barbara Manville, Dennis Bloom, Andrew Marone, David Rosen, Roy Meadows

Staff: George Benson, Director of Planning, Christine O'Neill, Clerk

Mr. Mitchell called the meeting to order at 7:03 p.m.

Election of Officers

This was added to the agenda accidentally. The Clerk apologized.

Public Hearings

Application 20.15 by the Town of Newtown Board of Selectmen, for a Text Amendment to the Zoning Regulations of the Town of Newtown, to §6.03.310, to allow rental residential housing in up to two of the existing campus buildings with a Special Exception, as described in documents submitted to the Land Use Agency 12/9/20 revised 12/17/20.

Due to the level of public participation, the Commission decided to take up Application 20.15 first.

George Benson, Director of Planning, introduced the proposed text amendment. There has been a long history of discussion over housing on the Fairfield Hills (FH) campus. The 1998 FH regulations originally contained a number of housing options. The subsequent Master Plan removed those uses. The Planning and Zoning Commission (the Commission) used the Master Plan as a guide to create the Fairfield Hills Adaptive Reuse Zone (FHAR), at which point residential use was entirely eschewed. In 2010, an online public poll showed that the majority of people did not want residential uses on the campus. However, a subsequent question on the poll asked if they were in favor of mixed use residential and the majority said yes. Both the 2014 and 2019 Fairfield Hills Master Plan Review Committees (FHMPRC) put forth recommendations for residential uses on campus. In the 2020 election, a referendum asked if Newtown residents were in favor of housing on campus. The majority were in favor. The task of the Commission is to use the Master Plan and the results of the referendum as recommendations to formulate appropriate zoning regulations.

Currently, the zoning regulations for FHAR have about 21 permitted uses, which means that no public hearing is required to approve them. Yet because housing is such a controversial use, this regulation has been drafted as a special exception rather than a permitted use - so any proposal would require a public hearing. Because FH is

municipally-owned, any proposal for the campus must be pre-approved by the Board of Selectmen before it comes to the Commission.

Mr. Benson went through the proposed text and explained each section of 6.03.310(A).

1. A Lease agreement negotiated with the Board of Selectmen and Fairfield Hills Authority shall be submitted prior to and shall be contingent upon the Special Exception approval.

The provision about the lease agreement was done in the interest of the public, so that those details will become part of the public hearing.

2. For-profit, taxable entities and uses and non-profit entities and uses will be considered. The for-profit projects shall not be exempt from real estate taxes, personal property taxes or sewer and water use fees. The non-profit projects shall negotiate a pay in lieu of taxes (PILOT) agreement with the Board of Selectmen. Other variations of municipal revenue sources can be considered by the Board of Selectmen.

The PILOT provision was meant to ensure that, even if a nonprofit moves into the building, the Town will benefit in some way from the arrangement.

3. Rental projects shall include a rental plan with a Management Officer or an independent Management Company to administer rental applications and agreements. The rental plan shall be in effect for the duration of the Lease, filed with the Town, and updated as necessary.

This is to ensure that the rental units are managed properly, and that someone will be held accountable for the upkeep.

4. Leases shall include at a minimum the following conditions:

a. Residential and commercial unit rental agreements shall contain a notification and waiver of Parks and Recreation activities, daily public use, other leased entity/tenant uses and special events held at the Fairfield Hills Campus.

b. Parking Agreement.

c. Common Area Maintenance (CAM) charges.

Mr. Benson explained that this was written in response to the fear that someone might rent an apartment, and then complain about the ballgames or community events that currently take place on the campus. This item will notify the tenant before they move in about these events. The CAM charges are universal among FH tenants and pay for the maintenance of the campus.

5. Existing historic exterior architecture shall be maintained.

This ensures that the historic architecture will not be lost in favor of a less expensive option.

6. Apartments shall be limited to one and two bedroom units.

This is required of all apartments in town.

7. A Commercial component shall be included in any project proposal.

Mr. Benson reminded the Commission that many discussions in the past were about mixed use, not exclusively commercial or exclusively residential. This item was written to apply to the whole project, not a single building. So hypothetically, a developer could propose working with two buildings, and have one with all residential and the other with commercial. This flexibility is in an important component that gives the Commission ultimate control.

8. Adequate Campus Parking shall be proposed utilizing newly constructed parking spaces in compliance with Section 8.03.600, Schedule of Minimum Parking Requirements. Any potential parking structures must be in harmony with the character of the campus.

This was written to address potential concerns raised by town residents.

Mr. Benson returned to the "residential with commercial component" concept. These big, multi-floor buildings are complex in terms of structure, so specifying where, exactly, commercial is acceptable vs. residential is too particular. No one can predict what sort of proposals will come through the doors. The text amendment is designed for flexibility. If a proposal is not good for the town and is not good for the campus, there are several levels at which the project can be rejected or discouraged. There are many checks and balances built into the process.

Mr. Benson added that since the Town owns the property, no developer can sue to the Town to force the acceptance of a housing proposal.

Mr. Mitchell asked if there were any general comments from the public.

Dan Rosenthal, First Selectman of the Town of Newtown, explained that the Board of Selectmen endorsed the FHMPCR revisions in a meeting in December. Mr. Rosenthal would like the Commission to follow up and approve those revisions as well. He also requested that the public hearing be kept open in case any members of the public missed this meeting.

Mr. Benson added that there are two ways to amend the FH zoning regulations. One way is for the FHMPCR to formally send to the Commission a list of proposed changes, which the Commission may then deny, amend, or approve. The other way is for the Land Use Agency to write a regulation on behalf of the Commission or the Board of Selectmen.

Mr. Swift asked if an applicant could come forth with a regulation change. Mr. Benson said that anyone can propose a change to the regulations. Mr. Swift clarified that this meant there are three ways to change the regulations. Mr. Benson added that the final decision is in the hands of the Commission. Mr. Mitchell pointed out that the Board of Selectman must give their approval for an outside applicant to propose a zone change, since you cannot rezone someone else's property.

Mr. Mitchell noted that he would like to rework the language regarding the waiver in #4. In #5, Mr. Mitchell wanted to be clear that people could restore the outside of the buildings, which would not necessarily violate the maintenance of the architecture. Ms. Cox asked who would pay for such restoration. Mr. Benson said the Town would pay for nothing for the development of the properties. Finally, Mr. Mitchell wondered if #8 might include something about guaranteeing certain parking spots, or how that related to lease lines. Mr. Benson reiterated the importance of leaving the language open given the diverse proposals that might come before the Commission. Mr. Rosenthal clarified that this regulation was written to avoid a developer offloading the responsibility of the parking spaces to the Town.

Ms. Cox asked how many people were involved in the Fairfield Hills Authority. Mr. Benson said 5 or 7, but specified that they can only give comments as opposed to grant an approval.

Mr. Swift asked if in #8, "parking structure" referred to a raised parking structure. Mr. Benson said yes, and moreover it is currently a permitted use in the FHAR zone. Again, this would still be evaluated for appropriateness by the Commission.

Mr. Rosen asked if there was consideration of limiting the number of units per building in order to control vehicular traffic on campus. Mr. Benson replied that this would be part of the special exception process, adding that the project must be financially viable for the developer. There is also a State traffic permit for the campus. The impervious surface footprint of the campus cannot be increased, hence the reason for taller structures. The stormwater system cannot handle an increase in impervious surface. So, the number of spaces allowed is restricted by several factors.

Mr. Benson stated that the Town is not in the business of designing a project for a developer. The regulations should just give general ideas of what is acceptable.

Mr. Bloom asked if water and sewer had capacity for these projects. Mr. Benson said there seems to be ample capacity right now, but the developer would need to go to the Sewer Authority. The goal of this amendment is to have developers build within the existing buildings. They cannot knock down the current buildings and rebuild in the same footprint.

Ms. Cox asked about #7, wondering where cars would come in and out, in relation to walking paths. Mr. Benson reminded her that these are Town roads. Mr. Mitchell said that would be one of the considerations during the special exception hearings.

Ms. Manville asked over the last 5 years, how much interest has there been in FH by developers. Mr. Benson said there have been a lot of ideas including an ice rink, an auditorium, medical offices, and a veteran's home. Ms. Manville asked if there was serious interest currently. Mr. Benson said yes, and in fact that is part of what spurred this process.

Mr. Meadows asked about the commercial component requirement, wondering if someone could propose an entirely residential building. Mr. Benson said yes, *if* they were to include a second building that has a commercial component. He further clarified that "commercial" could mean anything from a small grocery store to an office. A condominium would not be commercial.

Mike Daubert of 74 Birch Hill Road, Newtown, CT thanked the Town for their hard work. He stressed the importance of leaving these regulations flexible, in order to attract a developer. The many environmental issues associated with the buildings and the requirement of keeping the original exteriors will raise costs for developers. Mr. Daubert added that parking is another big consideration for the developers, so he appreciated the flexibility built into that provision. It is likely that a developer will need to erect a parking garage due to limitations on impervious footprint. His message was that the best way to get a return on investment for these buildings was to leave the regulations ambiguous, to accommodate diverse proposals. Developing these buildings will lead to more people patronizing Newtown businesses and attract new enterprises to add to the tax base. He was very grateful to the Commission.

Mr. Rosen asked if there was any modeling done to predict revenue for such a project. Mr. Benson said there were a few projections, which he would be able to bring next meeting. The buildings will be taxed or provide a PILOT. Mr. Rosenthal added that every building that is renovated is one less building that needs to be taken down by the Town. The demolition costs would range from \$2-4 million, which would fall on the taxpayers. Mr. Benson added that while it is not within the purview of the Commission to look at finances, since that is up to the Selectmen, he will provide round numbers as requested. Mr. Bloom asked what this Commission had to do with finances. Mr. Benson reiterated that he would provide some numbers just for the sake of ideas, but confirmed that they could not, for instance, be used to make a decision.

Mr. Meadows asked what "other variations of municipal revenue" meant in #2. Mr. Benson said a developer might propose some other financial arrangement, particularly for a nonprofit, to ensure that the Town gets some return on investment. Mr. Rosenthal said that taxes must be paid to the Town, which was the purpose of the regulation. Mr. Benson said some examples might be paying a lump sum, or renovating another Town building.

Deborra Zukowski of 4 Cornfield Ridge Road, Newtown, CT read the letter she submitted to the record. Ms. Zukowski's key points were, "unless the zoning amendment is paired with an update to the Master Plan, an integral aspect of the recommendation will be lost" and "unless the Master Plan is amended to incorporate this intent prior to the receipt and review of mixed-use projects, I can't support the proposed amendment to the Fairfield Hills Adaptive Reuse Zone."

Mr. Benson responded that the FHMPRC's plan revisions will be considered in the future. There is no legal or procedural requirement that the Master Plan Revision be approved before the text amendment or at the same time. Any special exception that comes forward will need to refer back to the Master Plan, so it will certainly be

important to approve that aspect. He informed her that the Master Plan review will likely make it onto the agenda within the next several meetings based on the schedule. Mr. Benson verified that everything Ms. Zukowski said was correct - the timing would just be different than what she was perhaps expecting.

Mr. Daubert, who was involved with the original FH purchase, shared that a sticking point of purchasing the property was that it would be self-sufficient and would not be a burden to the taxpayers. For the last 20 years, the Town has tried to push these buildings as solely commercial, but that just isn't viable. The residential component seems to have more interest.

Mr. Mitchell moved to continue the public hearing to the next regular meeting of January 21st, 2021 at 7 p.m. via Zoom. Ms. Cox seconded. All were in favor and the meeting was continued. It was clarified that the reason for continuing the hearing was extra time for public participation and Commission deliberation.

Application 20.14 by Neviana Zhgaba and Aquila's Nest Vineyard, LLC, for a Text Amendment to the Zoning Regulations of the Town of Newtown, to §3.01.400, to allow for functions at a vineyard including food trucks, private events, recreational activities, art installations, and farmers markets, as described in documents submitted to the Land Use Agency 12/3/20.

Ardian Llomi and Neviana Zhgaba, the applicants, explained that they are limited in their ability to perform certain activities at their new vineyard, Aquila's Nest, due to the current Zoning Regulations. Ms. Zhgaba explained that because of COVID-19, the Land Use Agency has been able to sign off on certain activities such as food trucks, but they were asked to propose a text amendment in order for such activities to be permanently allowed. Socially-distanced events such as yoga and outdoor parties are popular during the pandemic and have been successful at the vineyard. Ms. Zhgaba expressed that they have partnered with different businesses and would like to continue doing so, such as in the capacity of farmers markets or art installations.

Ms. Zhgaba read a letter from Andrea Spencer of the Cultural Arts Commission that had been submitted to the public record. Ms. Spencer strongly supported the text amendment, as it would allow Aquila's Nest to collaborate with community artists and provide additional venue space.

Mr. Mitchell said that his initial thought is that these are lovely activities for a vineyard, but perhaps they should not be as-of-right since vineyards may be in residential zones, as is this one. To have these uses as permitted, rather than special exceptions, would not allow the Commission to examine particular activities and sites to determine if they are appropriate for the neighborhood. He stated that this is a good first draft to chew on.

Mr. Benson shared that he had been working on his own draft of regulations for vineyards, even before Aquila's Nest came to be. He displayed it for the Commission, but added that it is a very rough draft. He agreed with Mr. Mitchell's assertion that the Commission should have some control via special exception. Mr. Mitchell also contributed that the State expanded its allowed activities in a vineyard since the Commission's original special exception approval of the Aquila's Nest project.

Mr. Benson wanted to get feedback from the Commission and from the public, especially because this is a controversial use to have in a residential zone.

Ms. Cox said she was concerned that there would be a lot of noise and traffic associated with this amendment, because Toddy Hill Road¹ is already busy. Mr. Benson reminded her that this amendment would apply to any vineyard in Newtown, not just Ms. Zhgaba's project.

¹ Aquila's Nest Vineyard is located at 56 Pole Bridge Road, off Berkshire Road.

Mr. Swift agreed that Mr. Mitchell's concerns were well-founded, and he supported the idea of making these special exception uses rather than as-of-rights. He didn't have a specific issue with what was being proposed, but like Ms. Cox, he would also want to look at noise and traffic for a site-specific proposal. Ms. Manville agreed.

Mr. Benson mentioned that the Land Use Agency has a special event form that would need to be filled out for each event, to ensure adequate parking and such.

Ms. Cox said she was concerned that this was getting away from farming and selling the direct product of the farming, and becoming more of a commercial business. Ms. Zhgaba said that customers enjoy the farming experience and seeing where the products come from. Mr. Mitchell agreed that it is natural to pair off-site products with on-site farmed crops, the same way a dairy farm pairs ice cream with cones; but, he said, the Commission needs to look at what could possibly go wrong or not work to the benefit of the community.

Mr. Benson said he would not be in favor of a farmers market, as it seemed too big, but that can be examined at a subsequent hearing.

Mr. Meadows thought one food truck was too restrictive. He also said that the list of acceptable items for a farmers market appeared to leave out meat.

Ms. Zhgaba replied that the farmers market is simpler and smaller than perhaps Mr. Benson had interpreted. She also said they do not really have the capacity for multiple food trucks, but appreciated Mr. Meadow's suggestion.

Ms. Cox moved to continue the public hearing to the next regular meeting of January 21st, 2021 at 7 p.m. via Zoom. Mr. Mitchell seconded. All were in favor and the public hearing was continued to allow more time for deliberation and reworking the language.

(continued) Application 20.13 by Negreiro & Sons Construction, LLC, for a 16-lot residential Subdivision located at 203 & 211 Berkshire Road, as demonstrated on a set of plans titled ““Holly Estates,” Newtown Connecticut, 203 & 211 Berkshire Road, A Subdivision Plan” dated 9/30/20 last rev. 1/5/21 and supporting documents submitted to the Land Use Agency 11/19/20, 12/17/20, 12/29/20, and 1/5/21.

Larry Edwards of Edwards Associates, 227 Stepney Road in Easton, CT, noted that the changes from the last meeting were based on Deputy Director of Land Use Rob Sibley's comments. A right-of-way has been added at the end of the cul-de-sac, even though applicant Joe Negreiro would prefer not to and the maximum number of houses had already been placed on the dead-end road.

The last open item, Mr. Edwards said, is that the Conservation Commission has not yet met to approve the Open Space. The Newtown Forest Association (NFA) is considering accepting the donation of land instead of the Town, as permitted by the Subdivision Regulations, but that agreement is also outstanding.

Mr. Mitchell asked if the Connecticut Department of Transportation (DOT) would act before the Commission, and if the sightline of Holly Lane was calculated based on speeds that come from the State. Mr. Edwards replied that the Commission will act first, and the speeds do come from State data.

Mr. Mitchell shared that when he went for his site walk, he was confused by the placement of the lot pins in relation to the survey. Mr. Meadows said that on his site walk, he found the map to have been reasonably accurate.

Mr. Meadows expressed that he still has issues with the sight line. He realized that Chestnut Hill Road, which is right across from the proposed entrance of Holly Lane, creates an additional challenge. He suggested that

moving the road 200 feet west, into the wetlands, would create a much safer sight line. The wetlands could be recreated elsewhere, he said, which would not be a big deal.

Mr. Edwards explained that standing on the property will not accurately represent the sight line - the whole front part of that site will need to be regraded and the trees removed. Mr. Edwards also said that moving the road into the wetlands would not be acceptable to the Inland Wetlands Commission (IWC). Ms. Cox said it is still dangerous to come out onto a curve. Ms. Manville added that there is a hill in addition to the curve. Mr. Edwards assured the Commission that the regrading will fix those issues. Mr. Meadows said that regrading will not change the position of Chestnut Hill Road. Mr. Edwards reminded the Commission that the DOT will ultimately ensure that the sight line is acceptable.

Mr. Meadows referenced last meeting, when Mr. Mitchell said that the Commission does have traffic safety responsibilities. Mr. Edwards said there is no greater expert than the DOT, and they should have the final say. Mr. Meadows asserted that the safety component is important and worth Commission consideration.

Mr. Benson said that it is the DOT's purview to grant or deny the encroachment permit. The Commission can make recommendations, but the ultimate decision lies with the State.

Mr. Swift agreed with all of Mr. Meadows's points. Mr. Swift wondered if Mr. Benson was saying that the Commission has no grounds to deny based on traffic.

Mr. Meadows strongly felt the Commission should help the applicant craft a better, safer project than what the DOT is requiring.

Mr. Edwards pointed out that the application submitted to the IWC did include an alternative that had a road going through the wetlands. Such wetlands disturbance was deemed unacceptable to the IWC, and was rejected. The degree of disturbance Mr. Meadows was proposing would also require a Connecticut Department of Energy and Environmental Protection permit and an Army Corps of Engineer permit.

Ms. Cox asked if the right-of-way that had been suggested by Charles Zukowski last time was added to the plans. Mr. Edwards said yes, since that was also one of Mr. Sibley's requirements.

Mr. Mitchell felt Mr. Meadow's idea of proposing an alternative to IWC and DOT was a good thought. Mr. Edwards said he could not envision IWC approving such a significant encroachment upon wetlands.

Ian Eller, who was displaying the map, showed Ms. Cox where the eastern property boundary was. Mr. Eller was able to locate and display the alternative that was rejected by the IWC. Mr. Edwards disconnected from audio and attempted to rejoin.

Mr. Negreiro, the applicant, said that the regrading and tree removal will certainly improve the sight line. A safe sight line for the homeowners would be his goal as well. Once the work is started, it will become obvious that the sight line is acceptable.

Mr. Mitchell agreed with the applicant team that if the IWC rejected the alternative which crosses a small part of the wetlands, they would certainly reject the large disturbance Mr. Meadows was considering.

Mr. Benson asked to see the staff review submitted by Mr. Sibley. When the Commission examined the letter, it appeared that everything had been addressed except waiting for the Open Space recommendation from the Conservation Commission, and a somewhat confusing statement: "Access along the proposed road should be provided." This was not in his previous review, and Mr. Benson did not remember where, exactly, Mr. Sibley intended that access to be. Since the Commission was waiting for the Conservation recommendation anyway, Mr. Benson said he would check with Mr. Sibley.

Mr. Meadows asked if all voting members have walked the property. Mr. Swift said he thought it might be irrelevant, since the grading and clearing had not been done and the DOT had the final say anyway.

Mr. Benson asked if Mr. Edwards could submit all the documentation that had been provided to the DOT. Mr. Swift recalled the Pleasant Paws project doing something similar, as they also had a sightline issue. Mr. Edwards agreed.

Dennis Casey of 23 Paugussett Road, Newtown, CT asked what kind of guarantee he would have that the Town will not use that Open Space for storm debris or "anything you could imagine." Mr. Casey hoped that the wetlands would remain preserved. Mr. Mitchell said that Open Space cannot be built on or dumped on. Mr. Casey brought up the suggestion last time of a horse path, or if a resident might use the area for hunting – he wanted assurance that those things would not happen. Mr. Benson explained that legal agreements protect Open Space in perpetuity from building or dumping. Mr. Casey renewed his objection to the subdivision on the grounds that it is not compliant with the Plan of Conservation and Development.

Ms. Cox moved to continue the public hearing to the next regular meeting of January 21st, 2021 at 7 p.m. via Zoom. Mr. Mitchell seconded. All were in favor and the public hearing was continued to wait for a Conservation Commission recommendation, a NFA agreement, and a submission of the documents given to the DOT.

Referrals

Referrals from Town of Monroe, "RAA-2020-07, File #1014E – Affordable Housing District" & "ZCA-2020-03, File #1017D – 196, 201, 211 Main Street to proposed AH District"

Mr. Benson shared that these proposals do not really impact Newtown since the subject property is far away from the town line. Yet he is confused by the referral, because it appears to allow affordable housing on one of the best commercial properties in Monroe without sewer capacity. Mr. Benson had been unable to get ahold of the Monroe Planning and Zoning staff to get the background on this proposal.

There was some discussion about whether Newtown really had a horse in this race to comment. Ultimately, Mr. Benson and Mr. Mitchell felt that the best route was to say there was no impact to Newtown. The Commission was in agreement.

Minutes

Ms. O'Neill presented a document that she and Mr. Mitchell had created with amendments to the November 19, 2020 minutes. The amendments from the document are listed below:

1. Page 1, Paragraph 2: Replace "if they were on the same property" with "if they were on other people's properties"
2. Page 2, Paragraph 7: Replace "did not want to ask things of the applicant above and beyond what the regulations require" with "while the Commission cannot make the applicant do things beyond what the regulations require, it is still worth discussing"
3. Page 2, Paragraph 9: Remove "but the role of this Commission is not enforcement"
4. Page 3, Paragraph 2: Replace "egresses" with "accessways"

With no further discussion on the amendments, Mr. Mitchell made a motion to approve the minutes from the meeting of November 19, 2020 as amended. Mr. Swift seconded. All were in favor and the minutes from the meeting of November 19, 2020 were approved as amended.

Mr. Meadows said that "utility quarter" on page 3 should be amended to "utility corridor." Mr. Mitchell made a motion to approve the minutes from the meeting of December 17, 2020 as amended. Ms. Cox seconded. All were in favor and the minutes from the meeting of December 17, 2020 were approved as amended.

Adjournment

Mr. Mitchell noted that there were three appeals pending: a chicken coop closer to the property line than the Zoning Regulations allow at 7 Fox Hollow Lane, the 13 Hawleyville Road gas station denial, and the 135-139 Mt. Pleasant Road approval with conditions. Mr. Swift asked if these were legal actions, and Mr. Mitchell confirmed that they were in court.

Mr. Rosen made a motion to adjourn. Ms. Manville seconded. All members were in favor and the meeting was adjourned at 10:01 p.m.

*Respectfully submitted,
Christine O'Neill, Clerk*

A recording of the meeting may be found

here: https://drive.google.com/drive/folders/1_n8cg8OKpaW8g4nvgAvp7zheO1sV9IYC