

North Salem Planning Board Minutes

August 19, 2009

7:30 PM – Annex

PRESENT: **Cynthia Curtis, Chairwoman**
 Charlotte Harris, Board Member
 Bernard Sweeney, Board Member
 Gary Jacobi, Board Member
 Hilary Smith, Planning Consultant

ABSENT: **Robert Tompkins, Board Member**
 Roland A. Baroni, Town Attorney - not required to attend

Chairwoman Cynthia Curtis calls the August 19, 2009 North Salem Planning Board Meeting to order.

WORK SESSION:

1. Continuation of Discussion of Various Code Issues:

- Wetlands

Freshwater Wetlands:

Cynthia states that the Board will discuss the Wetlands first. Bruce is only able to be here for about twenty minutes, so Hilary has been asked to concentrate on the critical aspects of the proposed wetlands changes. Cynthia asks if anyone needs an extra copy. Extras are handed out. Cynthia reminds the Board that when working with the body of the document, the text in the smaller size font has no changes proposed, the larger type font shows areas of text to be changed. The changes are very simple. We are concentrating on procedural items to make the process easier for the Applicants.

Hilary states that two definitions have been added, one for Water Control Structure, and the other is a new concept for a Wetlands Review Committee. This will be a three person Committee consisting of the Building Inspector, the Wetlands Inspector, and one member of the Conservation Advisory Council (CAC). The Applications would come to the Committee for an initial look to see which category they fall into. Page 8 has a list of certain criteria for certain permits which could be eligible for approval simply by the Building Inspector. That is up for discussion as to what the criteria should be, and the specific language. On Page 10 we added provisions for the Planning Board to Waive the requirement for a Public Hearing. Cynthia refers to Page 7 and states that the little steps in between are finally cleaned up as to where the process begins. Applications used to go to the Town Clerk, the Town Board, and then the Building Department. There were still places in the Town Ordinance where the language was not changed. Cynthia states that an Applicant will begin in the Building Department, and within 10 days the Application is forwarded to the Wetlands Review Committee. Cynthia asks Bruce if 10 days is a reasonable amount of time. Bruce requests the language be changed to 10 business days. Bruce states that the efforts are going in a good direction from the standpoint of comments received over the years from Applicants about Wetland Permit Applications, and under certain circumstances expediting them, and distinguished them from larger scope of work. Bruce states that there are a number of references throughout the document to the Town Clerk. Those should be taken out, as the reference to the Town Clerk is not relevant any more. Bruce states that it is important where the Applications go. Bruce states that he personally is not the individual who receives the Applications. The idea had been that they would go to the Town Clerk and then she would circulate them. Bruce states that it may be helpful to have the number of copies listed. Bruce states that for several years the Applications have been going to

Janice Will, the Secretary to the CAC for processing. Bruce believes that process still works unless the Board has an objection. Bruce states that the Applicants see Janice initially for an Application. Bruce does not want Applicants coming in thinking they are receiving Applications from him, or from Rosemary. Cynthia states that it is great that Janice is doing it. Cynthia is not sure if the CAC is a functioning Board at this point. Cynthia states that she will have a conversation with the CAC. If they are going to step up to the plate and have meetings on a regular basis, the current process will work. Cynthia states that the CAC has not responded to this Draft yet, which is a little discouraging. Hilary states that the other option is to have them go through the Planning Board Office.

Bruce refers to Page 5 where the definition of Wetlands Inspector is listed, and states that the current Chapter 107 does not currently read that way. Hilary states that the language was taken from the current General Code. It is determined that Bruce does not have the current chapter. He is referring to the earlier chapter. Cynthia states that it was changed in 2005. Bruce refers to the top of Page 7 regarding the effective date of this Chapter. As he understood it this had to do with when the Chapter was originally written back in 1987. Bruce states that it would be good to put in the date now. Cynthia will take that up with the Town Attorney. Cynthia asks if we want to exclude standards that go back 20 years. This structure is already there. It enables an Applicant to get on with it. Cynthia asks if we are worried about the extent of the repair, such as a dam that has a huge crack in it. In order to repair it, it needs to be rebuilt from the footing up. Cynthia refers to the Dubin Wetland Application regarding the replacement of the bridge which no one had a problem with, versus redoing the footings. Bruce can't think of an instance where the scope of work has gone that far. If it had, the Applicant would need a new Permit. Cynthia asks Bruce if he needs a definition to take Applicants from a repair to a replacement. Bruce refers to decks when boards need to be replaced, versus the structural part needing to be changed. Cynthia confirms with Bruce he does not require a definition.

Gary refers to Page 3, Item No. 2, and would like to know what distance is being referred to. Hilary states that it does not have a distance. It is the amount of land that would be within the elevation of less than five feet above the wetland or watercourse. Gary states that it could be a mile perpendicular to the wetland with a gradual slope. Bruce refers to the house right across from the Post Office and states the whole area was a controlled area. Cynthia states that these are standard definitions. Cynthia asks why we would not want someone to come in for a Permit. Cynthia asks if there has been a problem with this definition which has been in affect for 20 years. Gary thought that any text in small print was not being changed. This text is in large print. Cynthia states that the larger print means that there was a change within the item. Hilary states that for the most part the practice is to imply a 100 foot buffer. Cynthia asks if we should take this out. Hilary talks about taking it out or making it clear and start applying it. Cynthia talks about having a performance basis where there is a critical low area that goes on for a long distance on one side of the wetlands, and the other side is dry. A 100 foot buffer would not be imposed on the dry side. More than a 100 foot buffer would be required on the low level area. Gary states that maybe Item No. 1 should come out. Hilary states that the problem with Item No. 2 is that the less than five feet above the surface water is difficult to apply because contours are usually mapped at two foot intervals. Gary states that Item No. 2 is poorly worded. Gary refers to the definition for a floodplain and asks who determines the one-hundred-year flood. Bruce states that is a surveyor's job, and there are maps. A surveyor is responsible for determining on a specific individual's property the portion that may be included in the floodplain. Cynthia states that there is a floodplain line on our Site Plan and Subdivision Maps. Hilary states that leaving the language in gives the Board the possibility to regulate in certain instances a buffer of greater than 100 feet. If you take it away, you will have a straight 100 foot buffer. Hilary states that many communities that have started out with a straight 100 foot buffer have gone to a graduated type of buffer system. Hilary states that this system is similar to the performance basis system Cynthia talked about earlier. Cynthia states that she will ask the CAC to do more research on this. A map source will added on the floodplain definition.

Gary refers to Page 10 and asks when the data will be filled in on the Alternative Section. Cynthia states that Section is up for our discussion.

Bruce states that he has to leave shortly and would like to cover a few more items. Bruce refers to Page 3 regarding the definition for Water Control Structure. Bruce states that we have had culvert pipes in controlled areas that have had to be replaced. Bruce gives Pietsch Gardens in Peach Lake as an example, as needing to replace a culvert pipe. Bruce determined that it qualified as an exemption as a Water Control Structure that was in place prior to 1987. If this language is removed, the new process would have it being referred to the Planning Board because it is a disturbance in a buffer. Bruce asks if that is what the Board wants to have happen. Bruce asks in this instance, what is the downside of the Applicant replacing the culvert pipe which is already there. Cynthia states that she thought that a culvert was a Water Control Structure. Cynthia talks about the language being changed so that a bridge would not be considered a water control structure. Cynthia confirms with Bruce that a box culvert may act as a bridge.

Bruce refers to Page 8, Item No. 2 regarding structures as far as the combination of materials attaching items to the ground, such as walkways and patios. Bruce states that retaining walls are considered fences under the definition of the Code. Hilary states that a retaining wall would not qualify because it would not have a ground clearance of at least six inches. Bruce talks about replacement of retaining walls as being a simple process. Cynthia states that if it is a repair of a retaining wall it is an excluded activity. Cynthia refers to the top of Page 7, Item e. Bruce refers to utilities and asks the Board if they want to make any special provision for them. They may be existing, and being replaced with underground materials. Bruce discusses buffers only, and states there are two parts, new and existing. Cynthia states that excluded activities would be from buffers and wetlands.

Bruce has to leave. Cynthia states that this discussion will be continued next month.

The Board goes back to Page 2 and discusses the definition of a Controlled Area. Cynthia states that she is not willing to give this one up so quickly. Cynthia is going to call the Town of Somers and research this more. Hilary talks about changing A, 2 to four feet instead of five feet. This way it would be easier to map. Gary asks four feet over what distance. Cynthia states that is what we are going to find out. Gary states that if we don't put it in he has the same question. Hilary states the idea is that it is as big as it needs to be so the level of elevation is needed for protection. Gary has a problem with gaining control over an unlimited distance. Hilary states that it has always been there. Gary states that does not make it right. Cynthia states that now that we have the GIS on the computer to see whether or not it applies to areas in North Salem. Charlotte talks about the comment from Bruce regarding the property across from the Post Office and asks if that is a large stretch that goes all the way back to Route 116. Cynthia states yes and in that instance when that house first went up the whole portion needed a Wetlands Permit.

Cynthia states that the definition of Structure is important, we have excluded activities listed for operating, maintenance and repair. Cynthia states that Bruce has asked about walkways and patios. Cynthia states that this is the same definition that triggers a Building Permit. There is discussion about referring to the Zoning Ordinance. Gary states that he finds some of this to be exceptionally inclusive as to allow the Board to stop almost anything. Cynthia states that it is not a stopping of an activity, a permit would be required. Cynthia states that this allows a review to make sure that no alternatives may be looked at, and that it is not expected. Cynthia talks about having Applicants go through a review process that looks at how the environment functions in this area. Cynthia states that if it is activity in a buffer area, it may be a quick sign off by the Building Inspector and the Committee. Gary states that this gives the opportunity for one neighbor to act against another. Cynthia states that there is no neighborhood involved with an Administrative Permit. Most of these will be handled by the Administrative Permit Process. Gary asks what happens if a Permit is not granted. Cynthia states that the Applicant may file an Appeal to the Zoning Board of Appeals. Cynthia states that this is the definition in the Zoning Ordinance. Gary states that the fact that it has always been that way does not make it right. Cynthia states that it is what has been in practice. Cynthia talks about providing for

relief and refers to the exemption area on Page 6, Item A (3). Cynthia states that this definition has always been there. Cynthia states that Bruce has been using the definition in the Zoning Ordinance. We were adding it into this Draft per a request from Bruce. Cynthia states that we are trying to have all of the definitions to be consistent. Hilary states that in some instances it is not necessarily the end product that is a concern, such as a four-foot walkway, but how that four-foot walkway will be constructed in that particular location. The walkway when it is all said and done may not be a problem. If they are coming in through a wet area with heavy machines, that should be considered. Cynthia talks about asking Bruce about adding in maintenance and repair of decks, patios and walkways to the list of exemptions on the top of Page 7. Any new installation would still fit in the definition of a structure which would require a Permit.

The Application process is discussed. When an Application comes in it will be circulated to the Committee of three who will access it as to whether it will meet the criteria to be handled by the Building Inspector or whether it needs to be referred to the Planning Board. Hilary states that the Application may also be handled as in the past by going to the Wetlands Inspector for review. The Committee of three will review all of the Applications and send them to the Wetlands Inspector, CAC, or Building Inspector. Most of the Wetlands Permits are being handled by those three currently. Only the large Applications are sent over to the Planning Board. Gary asks what the Committee of three base their decision on. Cynthia states that they base their decision on the criteria we are writing now. Gary confirms that the Committee of three determines that a Permit is required. Cynthia states that if the Application is very minor and it meets the criteria on Page 8, Item 2, then the Building Inspector alone may issue the Permit. If there is a disturbance in the wetlands that does not meet the criteria, but does not trigger a referral to the Planning Board due to it not being a disturbance of five acres or more, then the Wetlands Inspector and CAC go out to the Site. The Wetlands Inspector issues a recommendation to the Building Inspector who issues the Permit. Cynthia states that we are not changing the trigger for Applications to come to the Planning Board. We are trying to not involve the Wetlands Inspector by identifying which Applications are simple in order to avoid reviews which could cost approximately \$2,000.00 to Applicants.

Gary refers to Page 9, Item D. Cynthia states that the reason the language referring to the Wetlands Inspector had been inserted is because when Applications come over to the Planning Board there is a list of items that must be submitted. Cynthia spoke with Joe to inquire whether all of this extra detail should be required every single time. Cynthia talks about decreasing the submittal of some of these materials. Hilary states that it should not state "Wetlands Inspector" it should state "Wetlands Review Committee". The Committee is reviewing it and transmitting the Application. Cynthia states that when the Applications are referred to the Planning Board they are turning to Joe and asking him to advise which materials should be submitted. Gary asks when Joe gives the Planning Board an Application to review. Hilary suggests revised language. Gary asks what triggers a referral to the Planning Board. Cynthia refers the Board to the bottom of Page 8, Item C. Cynthia states that in any given year approximately 10 to 12 Wetland Permits come in. Approximately 2 are referred to the Planning Board each year. The 10 to 12 Wetland Permits did not meet the criteria to be referred to the Planning Board. There is a discussion about what is a regulated activity. Gary states that this document bounces people all over. Cynthia states that the structure is similar to the way our other land disturbance ordinances are set up. Regulated activities which require a Permit are listed first, then the excluded activities are listed, and then the procedures for obtaining a Permit would be listed.

Cynthia would like to go back to Page 8, No. 2 and talk about the concept. Cynthia states that Bruce kept referring to decks in buffer areas versus wetland areas. Hilary states that all of the activities that the Building Inspector is going to issue a Permit for without the consultation of the Wetlands Inspector have to be within the buffer only. There is a discussion about fences having a six inch requirement for ground clearance. This language may need to be revised to include fences for pools which would require a less than six inch requirement. Cynthia talks about having the repair or maintenance of a deck, patio, or walkway as an exemption. Cynthia states that the installation of a deck or patio may be a major job. Cynthia will speak with

Bruce about a definition for a Minor Structure. Hilary states it may not necessarily be the final product as much as the activity of the construction. Hilary states that the Committee will be able to look at the proposed Applications and decide the extent. Hilary states that the proposed Applications that are not signed off on instantly will be those done in consultation with the Wetlands Inspector. Hilary states that the next tier would be when the Wetlands Inspector goes out on the Site and makes recommendations as how to protect the wetlands and buffer areas. Cynthia states that we should have Bruce here for that discussion. Cynthia states that in looking at the Wetland Permits for the past few years there are instances when the Wetlands Inspector went out on the Sites for minor reviews for which minor bills were be generated.

Cynthia refers to Page 8 and confirms that the Board is happy with the process for what triggers the referral to the Planning Board.

There is a discussion about how long the Building Inspector has to issue a Permit. The Board feels that 30 days would be appropriate. Cynthia will speak with Bruce to obtain his opinion.

Cynthia states that numbers 4 and 5 on Page 11 should be rewritten into one item. Timeframes should be added, and then the numbering will change.

Cynthia states that either the proposed Applications go to the Building Inspector for a quick review, stay with the Review Committee, or are referred to the Planning Board.

Gary clarifies that if a proposed Application is submitted, the CAC has 30 days to submit their recommendation, and the Wetlands Inspector has 30 or 45 days to submit his recommendation. Gary asks if the Wetlands Inspector has to wait the 30 days for the recommendation from the Committee. Cynthia states that the Committee has 10 days to make their recommendation. Gary did not see where this document discusses that. Cynthia refers to the top of Page 8 where the language is listed. The Wetlands Inspector is on the Committee so he will receive it immediately. Hilary will rework the language so that it is clear.

Cynthia states that she has spoken with the Wetlands Inspector regarding cutting down on the amount of material requested to be received once a referral is made to the Planning Board. The Wetlands Inspector will decide what materials need to be submitted. In the past, copies of the Applicant's initial Application had also been requested.

Referring to Page 10, there is a discussion about the Public Hearing process being standardized. The waivers are discussed. Gary states that he does not agree with waving Public Hearings. Cynthia states that the Board recently waived a Public Hearing regarding tree slashing. Gary states that he did not vote yes on that. Gary does not feel it is a good idea. Cynthia provides an example for which someone has 5 acres of wetlands. This Application would be referred to the Planning Board. Hilary states that Wetland Applications that require any other Planning Board Approval will be seen by the Board. The Committee will look at the Applications. The example is someone wanting to expand their parking area 10 feet into the controlled area; it is a commercial property for which the Site Plan is before the Planning Board. Cynthia states that the Planning Board may not waive the Wetland Public Hearing if a Site Plan Public Hearing is required. Gary is comfortable with that.

2. Steep Slopes Protection Law:

Discuss Revisions Requested by the Town Board.

Cynthia states that she brought the proposed Draft Law to the Town Board. The Town Board liked it.

Cynthia answered most of the comments they had. The Town Board had a discussion about the size of the area. The definition for the Town of Somers is based on a 10,000 square foot area. Cynthia will go back and talk with Warren. Cynthia states that in our definition we have it listed as 1,000 square feet. We are more lenient than Somers. There is discussion about changing our square footage to 5,000 instead of 1,000. Hilary talks about the comment regarding certain items being processed by the Building Department. There is a discussion about setting up everything to come before the Planning Board. There is a discussion about the Building Department signing off on Permits, and the need to define that better. The Board discusses revisiting the process after it is in place for one year.

3. Comments From the Chair:

Cynthia states that the Board is going to have a Pre-Application coming in from a certified forester on a parcel of land. This proposal has prompted the Building Inspector, and a gentleman from the Westchester Agricultural Council to call and question the process and procedures. Gary asks if the Westchester Agricultural Council has any power. Cynthia states no, but they could have a lot of influence on whether or not our ordinance and procedures are sound. The Board discusses the Hausermann Project which was similar in nature. Hilary states that Orchard Hill is not a farm; it has not been used agriculturally, and has not been proposed to be. Cynthia states that they want to take down a lot of trees. Cynthia has advised the Applicant to come in for a Pre-Application as a first step. Gary states that there may be an issue with sales tax for the selling of the timber.

4. Next Meetings:

- Regular Meeting – September 2, 2009
- Work Session – September 16, 2009

5. Resolution:

Chairwoman motions to adjourn the Planning Board Meeting. Gary Jacobi seconds. All in favor. No opposed.