MINUTES OF THE CHESHIRE PLANNING AND ZONING COMMISSION
PUBLIC HEARING HELD AT 7:30 P.M. ON MONDAY, MARCH 22, 2010, IN
COUNCIL CHAMBERS, TOWN HALL, 84 SOUTH MAIN STREET,
CHESHIRE CT 06410

Present
Sean Strollo, Chairman; Earl Kurtz, Vice Chairman; Tali Maidelis, Secretary;
Martin Coburn, S. Woody Dawson, Patti Flynn-Harris, Gil Linder, Louis Todisco
Alternates – James Bolger, Leslie Marinaro, Ed Gaudio
Staff: William Voelker, Town Planner

I. CALL TO ORDER
Chairman Strollo called the public hearing to order at 7:31 p.m.

II. ROLL CALL
Mr. Maidelis called the roll.

III. DETERMINATION OF QUORUM
Following roll call a quorum was determined to be present.

IV. PLEDGE OF ALLEGIANCE
The group Pledged Allegiance to the Flag.

V. BUSINESS

Secretary Maidelis read the call of public hearing for each application.

1. Zone Text Change Petition
Planning and Zoning Commission
To amend Section 30, Schedule A, Permitted Uses
Para. 24B, 24C, Regulating Poultry
To modify the acreage requirement and other
Standards for the keeping of chickens.

Town Planner Voelker stated that this amendment was done in cooperation with
the Zoning Board of Appeals due to appeals of the order of the Zoning
Enforcement Officer regarding the keeping of chickens. The Town has seen
more interest in keeping poultry in this community and other communities, with
media coverage of the issue. The proposal seeks to amend Section 30,
Schedule A, Permitted Uses to reduce the acreage requirement to 80,000 s.f. for
poultry subject to the following:

a. The lot shall contain a minimum of 80,000 square feet
b. No more than 12 chickens or similar poultry shall be kept on the lot.
c. Roosters are prohibited on lots less than three (3) acres.
d. More than 12 chickens or similar poultry requires three (3) acres.
e. All poultry must be kept in a building or enclosure located no less than 50 fees from any lot line.

Under the current regulations, Mr. Voelker said poultry is permitted which requires 2 acres of land, and any buildings must be 100 feet from the property line.

Mr. Voelker advised that the new regulation permits this as a right in any district.

Discussion

Ken Wilson 361 Lincoln Drive, ZBA member, explained that the ZBA has dealt with several enforcement officer conditions where there were chickens involved. The residents were in violation of 24E, and in both cases, testimony was heard. ZBA heard from the zoning enforcement officer, neighbors and the residents, and in both cases the ZBA overturned the judgment of the ZEO to allow the chickens to remain. Many of the ZBA members thought the chickens should not be lumped in with other cattle or farm animals. The suggestion from the ZBA was, if ZBA members did not like the existing regulation, action should be taken to change it rather than just continuance of overturning the ZEO’s enforcement. This would end the confusion between neighbors who wanted the law enforced, and ZBA thought it should not be enforced. There were many debates by the ZBA on what was appropriate; options were discussed; and the proposed option and wording submitted to the PZC. If the PZC decides on a different lot size, number of chickens, this is agreeable to the ZBA.

Personally, Mr. Wilson said that he would like a change approved so there is less conflict. In each of the cases he was the lone voter to exclude the chickens because he believes the zoning laws should be enforced. He requested there be a law which more closely fits the needs of our community and those surrounding Cheshire. Mr. Wilson commented on the good job by the staff in looking into surrounding communities and their laws regarding poultry and requirements.

Commissioner Dawson asked where the hardship was in making these decisions.

In response, Mr. Wilson said his understanding is that when an appeal is made on a ZEO order, the hardship is different and is not taken in the same direction as other zoning appeals.

Mr. Voelker explained that these were not variance requests, but requests for an overruling of the ZEO’s order, and under the law a hardship is not required to be shown. The issue is whether the ZBA agrees with the person filing the appeal.
The applicants in the poultry cases went for an appeal, not a variance, and Mr. Voelker said they complained that the regulations, as written, did not adequately characterize how the birds were being raised as pets. ZBA is empowered to grant variances and can hear appeals of the ZEO's actions. This is what they did.

Mr. Wilson said that in hearing these cases there is a different definition of hardship and what is acceptable. In both cases the homeowners contesting the rule of the ZEO convinced the ZBA to allow the chickens to be kept.

Ms. Flynn-Harris commented on the ZBA being complimented for staff looking at surrounding towns and not being married to the verbiage. But, in the ZBA's experience in what came before it, she asked if the two cases met the requirement of 80,000 s.f.

In response, Mr. Wilson said that both applicants met this requirement and would have been acceptable under 24C.

Ms. Flynn-Harris asked if the applicants who raised the poultry for pets cited how many chickens were on the property.

In the last ZEO issue Mr. Wilson said the applicant had 3 chickens, and ZBA made a condition that they would not be replaced when they died. There were no requests for a large number of chickens, but just as pets and a hobby for the children, i.e. a 4-H project.

Mr. Maidelis asked what zone the two applications were in.

Mr. Voelker said both were residential, and one was R-20 and one was R-80.

Mr. Wilson said a horse only required a 2-acre lot, and both applicants would have qualified to have a horse, but did not qualify for the chickens.

In the ZBA vote, Mr. Cobern said he assumes it was 4-1 as required to overturn a ruling of the ZEO.

Mr. Wilson said the votes were 4-1.

Mr. Cobern asked if any roosters were involved.

Mr. Wilson said there were none involved, and both cases were chickens only, and people discussed the fact that roosters make more noise and chickens are generally quiet.
Mr. Todisco cited the new written regulation...no more than 12 chickens or similar poultry shall be kept on the lot...and asked if the ZBA cases had just chickens.

The ZBA cases had just chickens, but Mr. Wilson said it could be ducks, geese or even turkeys.

Mr. Todisco asked if ducks, geese and turkeys come under the definition of “poultry”...and if not the regulation should be more specific in this regard.

According to Mr. Voelker the way it is written is “or similar” and the Commission has the ability, if it agrees with the amendment, to clarify what this would be. Roosters are prohibited.

If a duck is not poultry, Mr. Todisco said this is a problem.

Mr. Wilson said his interpretation would be if they had 8 ducks and 4 chickens a person would be within the letter of the law.

With geese and ducks, Mr. Maidelis said there is a bigger noise issue, and this should be considered.

Mr. Todisco said two things should be considered...whether “poultry” is broad enough, and whether the same rules should apply if someone had 12 geese.

Mr. Maidelis agreed.

The Commission was informed by Mr. Wilson that the ZBA chose not to discriminate, and chose the word “poultry.”

Mr. Kurtz asked about the “building or enclosure located no less than 50 feet from any lot line”...and if this is an enclosure which the poultry could not get out of, or should it be fenced in.

Mr. Wilson sees it as a pen or building or shed.

In the current regulation, Mr. Voelker said it states “any building used for”...does not say “must be kept”. The amended regulation says “must be kept” which is more defined. The chickens must be kept enclosed and not hopping out and getting on neighbor’s property, as this would be a violation of the regulations.

If the homeowner allowed the chickens to roam, Mr. Wilson said this would be a violation of 24C.
It was noted by Mr. Todisco that an enclosure is different from a building, and the chickens do not have to be inside a building all the time, but can be in the enclosure.

The amended regulation was written to be broad enough to apply to many conditions, but Mr. Wilson said it is not so broad as to involve ZEO issues.

Mr. Dawson said that the ZBA wrote it, and the PZC either votes up or down on a zone change, and the issue does not need to be debated.

In a situation like this, which is permitted by right, Mr. Voelker said the PZC would not even see this, and the point is what the PZC wants the policy to be.

Regarding the 50 foot dimension, Mr. Linder asked how this was arrived at by the ZBA.

Mr. Wilson said that 24A (horse) has a 100 foot requirement and this sets the shape of the land, protects the neighbors from the noise or smell. ZBA thought the 50 feet, on a smaller piece of property, would protect the neighbors. Whether the 50 feet is enough is up to the wisdom and discretion of the PZC.

Mr. Linder asked if this also allows chickens to be maintained in front of the yard.

In reply, Mr. Wilson said there is no distinction between the front or rear property lines. It hoped the Commission would accept the ZBA’s recommendation.

With a 50 foot requirement, Mr. Maidelis does not see too much problem. R-20 and R-20A zones are in the center of town, very condensed, and the poultry should not be in these zones.

Mr. Wilson noted that the square footage is 80,000.

Mr. Maidelis said that in an R-20 zone many things can be done if the zone is broken up.

Going along West Main Street, Mr. Strollo said there are R-20 zones that are not yet developed, i.e. Lucore property.

Mr. Maidelis does not have a problem with anything above R-40, but R-20 and R-20A zones can also be commercial enterprises.

It was stated by Mr. Wilson that the ZBA thought that with the 50 foot setback from the property line would mean it could not be done in a lot under 80,000 s.f. It would have to be the appropriate shape to position the pen or shed. It would restrict which lots in the zones apply to the regulation.
Mr. Cobern stated that the Commission generally regards agricultural uses as existing by right, so there cannot be restriction of any zone.

Mr. Maidelis does not believe this would be agriculture. The testimony is talking about pets.

For the applicants before the ZBA, Mr. Wilson said the poultry was referred to as pets.

It was stated by Mr. Wilson that any changes made by the Commission would be accepted by the ZBA, and dealt with.

Mr. Voelker informed the Commission that poultry is allowed in every zone as a matter or right, and it is free acres versus what is proposed.

Mr. Cobern said it is a big lot, 2 acres.

PUBLIC
Eric (?) Watertown, CT, supports the case before the Commission, and cited a Bristol ordinance which allows keeping 12 fowl (chicken, ducks, geese) and submitted a copy of this ordinance to the Commission. In Bristol there is no minimum requirement of land to have the fowl. He noted that chickens love to eat ticks, and with chickens there will be no ticks. Chickens are a good thing, and according to the First Amendment a person can live happy on their land and in their house, and there should be no restrictions to lifestyle, but consideration.

Casey Barry, 721 Cook Hill Road, said he started the discussion on the chickens and the ordinance laws, and finds it unreasonable that people can have a horse on 2 acres but not 1 small chicken. He has responsibility for his chickens, cleaning the coop, counting them, and every day they lay eggs. His neighbors have complained about his chickens. He is thankful because it helped change the law. He has moved to an 11 acre lot and has 6 chickens and 6 ducks. Mr. Barry supports Cheshire being a farm town, and in the past the U.S. was a farm country. Regarding the pen, chickens do not run away more than 150 feet from the coop. He is in 4-H, is involved in the Grange Fair, and started with entering his tomatoes, and later his chickens. Two days after he got the chickens, his neighbors complained, and his family would have a fine of $150 if the chickens were not gone in 30 days. The story made the newspapers. He hopes other kids can share the experience of raising chickens and having responsibility taking care of them with food, water and comfort. His chickens lay at least an egg a day which his family eats.

Ken McGary, 106 Sloper Lane, 35 year Cheshire resident, supports the amended regulation. He commented on living in Florida but not being able to have a large dog, and how many chickens you have is one thing. How much ammonia chickens generate, and how much time is spent making sure it does not offend
the neighbors is an issue. He would like to have chickens, but has less than an acre of land, pays taxes all these years, but is not a farmer. You must take care of chickens, and on his property would not think of having chickens without talking to his neighbors. If the regulation is amended, it should be done as neighbor friendly. It is not the size of the lot but the care put into it. He wants a chicken tractor moving around his yard creating a big dirt spot, fertilizing the yard, giving him meat, eggs, entertainment for his grandchildren. He would not consider it without asking his neighbors. For the chickens it may have to be done on a case by case basis and cannot be solved by the number of square feet, but the people involved, doing something environmentally friendly.

Christine Barry, 721 Cook Hill Road, said she used to live on 44 Old Farms Road, and started the appeal for the chickens. They bought a house with a 12 acre lot, and the people who bought their house have a chicken coop which helped sell the house. Now, she has 6 chickens and 6 ducks. Her neighbor has a house up for sale and she asked about putting the chicken and ducks away, and he said "absolutely not" because it is so charming and is a selling point to leave the animals out. All her neighbors come with their grandchildren to visit the chickens, pet them, pick up a freshly laid egg, and there is positive feedback, along with press coverage. The chicken coop is gorgeous; she scoops it daily and lays fresh chips; and it is about 100 feet from the nearest neighbor. There is no smell, no ammonia, and is very clean, with the animals eating all the bugs. She objects to some of the concerns and comments stated at this meeting about being too close to the property line. In town, there are properties that are poorly maintained.

Curt Karpivich, 60 Farm Circle, Watertown CT was present to support Casey Barry because he went through the same thing a few years ago. In Watertown regulations were written and approved. He had chickens for 3 years before he asked the town for a wind turbine, and dealt with vicious neighbors. Mr. Karpivich said chickens are a great benefit for the community – they eat ticks and many insects, and they are smart and clean animals which stay in a closed area. He said all animals must be taken care of. In some urban environments chickens are kept 25 feet from a property line, and it depends on setback of the coop not lot size. Chickens are fowl, are great animals, and his chickens were raised by hand, but had to be given away because of vicious neighbors. His property is 1.5 acres and he had 12 small chickens being raised as pets. He commented on the laws for pesticides to kill insects, while chickens eat ticks and insects. The enforcement officer in Watertown told him that if had to do it over again he would have let Mr. Karpivich keep his chickens because they were pets.

Ms. Flynn-Harris would like to see some changes in the language, i.e. using "fowl" instead of "poultry".
Mr. Voelker said he would get a definition for the Commission, look at the statutes on poultry and agricultural uses. A legal opinion was received by staff late in the day today, and Mr. Voelker must review this information.

Ms. Flynn-Harris commented on the different zones, and taking into consideration the line that Bristol CT has for this to be family use only and not a commercial enterprise.

A comment was made by Mr. Maidelis about seeing chickens by the road.

Secretary Maidelis read comments from the Central Connecticut Regional Planning Agency, South Central Regional Planning Commission.

Chairman Strollo asked Mr. Wilson (from ZBA) if the Board was ever approached from people with half acre zones wanting 1 or 2 chickens.

Mr. Wilson said there were no zoning enforcement efforts that small, and both cases were in more rural sections of town, with 1 or 2 acre lots. Many different towns have different laws and the ZBA thought Cheshire’s law should be reviewed.

Mr. Strollo asked if other towns have restrictions about smell or noise.

Mr. Wilson could not answer that question, and the handout is about the size of the lots and the numbers of chickens.

Under Section 21.2 under Performance Standards, Mr. Cobern said it discusses obnoxious or offensive or toxic or corrosive fumes or gases not being released into the air, other than spreading manure or fertilizer.

Chairman Strollo continued this public hearing to April 2010.

2. Zone Text Change Petition
   Planning and Zoning Commission
   Technical Zone Text Changes for Consideration
   Section 24.4
   Enlargement (Correct reference to aquifer protection regulations);
   Section 34.10, 34.11 (Numbering)
   Section 40.2.1 and Section 41.2.1
   (copies to be submitted)

Mr. Voelker said these are called technical changes. One is in regard to the Aquifer Protection Rights. In adoption of the model regulations, Section 24.4 (Enlargement) was not amended which still references the old aquifer protection
overlay zone which is no longer in effect. The change is to recognize the Cheshire Aquifer Protection Regulations as a separate entity.

34.10 and 34.11 – correction on some numbering regarding off-site directional signs which must be clarified.

Under Special Permit Application on the site plan it is suggested to reduce the number of copies of plans from 9 to 6 to become more sustainable. The request is for the Commission to approve reduction of the copies. Mr. Voelker said this is just cleaning up the regulations.

Legal opinions were received today on this application and Mr. Voelker must review them.

Chairman Strollo continued the public hearing to April 2010.

3. **Zone Text Change Petition**
   **Planning and Zoning Commission**
   **To amend Section 33 – Off Street Parking**
   **And loading**
   **For comprehensive amendments to the Parking regulations.**

Mr. Voelker said this is to make the parking regulations into a more sustainable format -- improve the landscaping requirements, enable more creative and sustainable storm water management, reduce impervious surfaces, to make some separation in the types of uses regarding the number of parking standards, with recognition of medical offices leaving it at 1 to 150, and taking general offices at 1 per 200, retail at 1 to 250, recognize there are uses in the category which demand higher rates of parking than others, general design criteria to improve circulation and access management. The size of the parking space will be 9 ft. x 18 ft. There are definitions included...personal service businesses and finished space, and Mr. Voelker said he reviewed many requirements. Out west the requirement is that 50% of the parking lot had to be in shade, but this is difficult to do in the northeast due to the variations in the weather.

In general, Mr. Cobern stated his support of regulations in place to minimize the impervious surfaces created, as it aids the water treatment, reduces the flow, and helps eliminate non-point source pollution.

Mr. Todisco asked Mr. Voelker if, during his research, problems were found with the smaller parking spaces. From a personal viewpoint, Mr. Todisco prefers a larger space in terms of not damaging cars, etc. He asked if, in Mr. Voelker’s experience, based on the 9 ft x 18 ft this space is adequate and there are no problems.
Stating that is correct, Mr. Voelker said the size is a common standard in the country, and EGS studies indicate 9 ft. by 18 ft. is a common size parking space. A larger space is unnecessary, and requires more impervious space. There is one exception, in parking garages, where the space can be reduced to 16 ft. depth in some areas of a garage. 9 ft. x 18 ft. is a common standard for a parking space.

Ms. Flynn-Harris asked if there is anything in the regulation about minimizing curb cuts on adjoining parking areas.

According to Mr. Voelker some of this language is in the regulation...Joint and Shared Use, Section 33. Mr. Voelker read this section into the record.

The public hearing was continued to April 2010.

4. **To amend Section 46 Flood Plain Management Regulation. To follow the DEP recommendation For revisions to define and prohibit.**

Mr. Voelker stated that the Town just got this regulation from DEP, and it is similar to the model aquifer protection regulations. If the changes are not adopted which FEMA wants put in, then the flood insurance would be done. The changes were taken, literally, and these new regulations must be adopted by November 4, 2010. The process starts now for review of the regulations, and Mr. Voelker stated that FEMA is requiring the Town to adopt them. This was the same kind of situation with the aquifer protection regulations. For houses already located in the flood plain, insurance is required for the house. No new houses can be built in the flood plain.

The public hearing was continued to April 2010.

5. **Zone Text Change Petition**  
   **To amend and add to Section 32, Prohibited Uses**  
   **Section 31.3 (new) Outdoor Wood Burning Fireplaces**

These outdoor units can be called furnaces. Mr. Voelker reported that what is proposed is for outdoor wood burning furnaces be banned under Section 31.3, and he read the amendment to the section into the record.

In the language, Mr. Voelker said this does not include a fire pit, wood fire barbeque or similar outdoor recreation use.

Mr. Maidelis commented on a local news channel reporting there is a bill in the General Assembly working its way through banning these wood furnaces. If that bill is passed, he asked if the Town’s regulation would be in the same situation as with the aquifer.
Regarding this bill, Mr. Voelker advised that the bill in committee died in committee, and the bill did not ban the furnaces, but wanted stricter regulations than what is currently in place. A town’s regulations can be more restrictive than the State’s but not less restrictive. Anyone who has such a furnace does not have to take them down, and this is a building permit issue.

Ms. Flynn-Harris stated that existing furnaces would be grand fathered under the new regulation. If the final outcome is banning these furnaces, Ms. Flynn-Harris noted that the existing (grand fathered) furnaces would still have to meet the existing DEP regulations for height of smoke stack, output, etc.

The Commission was informed by Mr. Voelker that the outdoor furnaces he has seen in the community do not meet the DEP requirements.

Ms. Flynn-Harris stated the existing furnaces would still have to meet the State standards; they would be regulated by the State; could only burn wood, have a smokestack taller than the midpoint of roofs of surrounding buildings, meet setback regulations, etc.

Under existing law, Mr. Voelker, PA 05-227, outdoor wood burning furnaces must be located not less than 200 feet from the nearest residence not being served by the furnace, requires a smokestack to be higher than the roof peaks of residences within 500 feet of the furnace but not more than 55 feet. He said the furnaces he has seen are nowhere near this requirement. Violations are subject to fines of up to $90 per day of operation.

Mr. Dawson commented on a licensed heating person putting in a new smoke pipe, and he has to take out a building permit. The permit would not be granted for renewal. Mr. Dawson does not consider this furnace grand fathered because anything done on a house today must have a licensed person doing the work and meet code.

The Commission was informed by Mr. Voelker that nothing it does at this meeting on these regulations has an effect on the grand fathered furnaces. Even doing nothing requires people with outdoor furnaces to comply with existing State standards. Mr. Voelker does not believe the ones already installed had the benefit of a building permit by a licensed contractor, or even with a licensed contractor a building permit was not taken out.

Mr. Dawson stated that PZC passes a lot of laws which do not get enforced, and cited the tag sales in town with the same people doing the sales every week making a living off them.
With the regulation requiring 200 feet from the nearest housing unit not being served by the furnace, Mr. Todisco asked if this would limit the furnaces to the R-80 zones at this time.

Mr. Voelker said it would be large lots, many of which are found in the R-80 zone, but these furnaces are coming into smaller districts. With R-80 being two acres, Mr. Todisco asked if this would be 200 feet by 400 feet. With the State regulation restrictions, he said these furnaces would be limited.

Mr. Voelker said there must also be a 55 foot high smoke stack. The reality is people are installing them anyway without benefit of permits.

Mr. Todisco questioned the reasonable approach to the issue if people install them legally, with a permit by a licensed contractor.

Mr. Gaudio stated the reason for this entire discussion is the smoke itself which causes all the problems on this, and this is for the outside furnace. He questioned how many homes have indoor furnaces which produce as much smoke.

According to Mr. Kurtz these stoves are described as keeping oxygen from the fire, the wood smolders, and it is not a clean burn.

When you have one in your house, Mr. Gaudio said they do the same thing – it produces an irritant and this has generated the discussion on these outdoor furnaces. The State has regulations on this.

Mr. Cobern noted that the chimney on a house is higher than the roof of a house, and this is not, necessarily, the case with these outdoor furnaces.

The DEP is looking into this because these furnaces were burning non-stop, and Ms. Flynn-Harris said the ones in a house are sometimes wood pellets, not wood, and they do not go 24/7. These outdoor furnaces have people throwing everything into them, garbage, rubber, etc. and it is a 24/7 burn and what is going out the small smoke stacks was greatly polluted.

Mr. Gaudio stated his agreement on those issues, and as a member of the Fire Department, these furnaces warrant 2 or 3 calls a year about smoke in the area, and they do not present a problem to the fire department.

The public hearing was continued to April 2010.

6. Subdivision Text Change Petition
Planning and Zoning Commission
Technical Subdivision Text Changes for Consideration
Section 6.6.2 Other Regulations
Section 6.2, 6.5.1C, 6.5.2, 6.7 and 6.8
Correction to bring regulations more in line with the
Public Works Department Road and Drainage Standards
Town of Cheshire.

Mr. Voelker reported this is an issue generated through Public Works to make
regulations consistent with Public Works standards.
Ms. Flynn-Harris asked about Section 5.6.2 regarding cluster subdivisions where
a center island is desired. The regulation is saying that Public Works has taken
that out of the standard of the road so a developer cannot ask for an island.

Public Works does not like center islands for plowing purposes and this is why
they were taken out of the standard.

Stating she understands that, Ms. Flynn-Harris asked if the PZC is saying – if a
developer came in with a design, it would not allow the center island.

Mr. Voelker said the developer would have to request a modification of the
Subdivision Regulations. These amendments do not preclude the PZC from
granting modifications.

Ms. Flynn-Harris asked about Section 6.7 regarding street names, and she read
an excerpt from the regulation into the record requiring all street names to be
approved by the PZC. She noted that the PZC does not approve street names;
the names have never been required on the subdivision maps; and PZC was told
this issue was between the postal service, police and developer. Therefore, Ms.
Flynn-Harris believes this section should be removed.

Mr. Dawson commented on the State statute requiring the signs be large enough
and changed in all towns. Cheshire has a certain number of signs and has not
met the State deadline on this requirement for larger signs.

Mr. Cobern found something “odd” which is not proposed to be changed in
Section 5.6.2d…a loop street shall be considered as a cul de sac. But there are
cul de sac regulations limiting the number of houses on the cul de sac because
of the single entry point.

It was stated by Mr. Voelker that this was written this way only for the purpose of
street names.

The public hearing was continued to April 2010.

VI. ADJOURNMENT

MOTION by Mr. Cobern; seconded by Mr. Kurtz.
MOVED to adjourn at 8:30 p.m.

VOTE The motion passed unanimously by those present.

Attest:

[Signature]
Marilyn W. Milton, Clerk
Recorded from tape