

**PLANNING COMMISSION MEETING  
WEDNESDAY, SEPTEMBER 13, 2017  
TOWN HALL 7:00 P.M.**

Present: Chairman Michael Orefice, Lee Hall, Roland Perreault, Paul Roche, Alternate Member Debra Freidus, Alternate Member Michael Rewenko and LUC Redmond (arriving at 7:45 p.m.)

Also Present: Town Counsel Michael D. Rybak, Zoning Chair Michelle Rewenko, Building Inspector Jeff Neumann and Enforcement Officer Thomas Mitchell

Absent: William Starr

**1. OPEN MEETING – ESTABLISH QUORUM.**

Chairman Orefice called the meeting to order at 7:00 p.m. All members present are seated with Alternate Member D. Freidus seated for William Starr.

**2. APPROVE MINUTES OF PREVIOUS MEETINGS: ~~3/22/17~~ 8/9/17**

P. Roche **motioned** to approve the minutes of the previous meeting (which was 8/9/17 and not 3/22/17), seconded by D. Freidus. Motion passed unanimously with L. Hall refraining from vote due to his absence at the 8/9/17 meeting.

**3. REVIEW ZONING COMMISSION'S PROPOSED ZONING REGULATION AMENDMENTS IN ACCORDANCE WITH STATE STATUTE**

**8-3A(B). ZONING COMMISSION PUBLIC HEARING SET FOR 9/25/17.**

Zoning Regulation 2.3 Definitions – to add *definition of Affordable Housing Development* that includes definitions of “Assisted Housing”, “Set-aside Development” and “Median Income”.

Zoning Regulation 4.7.2 *Special Permit Uses in Multi Family Zone* to include 4.7.2c adding that Affordable Housing Developments are permitted by Special Permit in a Multi Family zone *only* and adds limitations to eligible applicants.

Zoning Regulation 6.5 *Keeping of Animals* to add regulations concerning poultry; that poultry shall be contained on owner's property by use of pens or fencing if necessary.

Zoning Regulation 6.17 *Storage Sheds* – to delete the first paragraph of the regulation concerning the appearance of sheds in the Lake Harwinton Association.

Zoning Regulation 6.19 *Use of Home for Personal Business* – to delete the existing wording and replace with new wording under title of *Home Based Business – Minor*.

Zoning Regulation 9.4 *Home Occupations* – to delete the existing wording and replace with new wording under title of *Home Based Business – Major*.

Town Attorney Michael Rybak and Zoning Chair Michelle Rewenko are present for discussion.

Chairman Orefice explains that at the Planning Commission's last meeting there was some discussion on the Zoning Commission's proposed regulations and some questions were raised that led to the request that the Zoning Chair and the Town Attorney be present at tonight's meeting to discuss further.

Chairman Orefice states that the first question the Commission had was regarding the definition of **Affordable Housing** and whether it was in line with the State of Connecticut's definition. That led to question of proposed **Zoning Regulation 4.7.2** *Special Permit Uses in Multi Family Zone* that states “eligible applicants shall be limited to the Town of Harwinton, a Community Housing Development Corporation or a local Non-Profit Organization”. This excludes private developers and there is question of whether the town can stop a private developer from coming in and incorporating Affordable Housing in town. This will be discussed later in the meeting.

Chairman Orefice states that the Commission is in agreement with proposed amendment to **Zoning Regulation 6.5 Keeping of Animals** to add that keeping of poultry shall be contained on owner's property by use of pens or fencing if necessary.

The Commission also is in agreement with proposed amendment to **Zoning Regulation 6.17 Storage Sheds** deleting the paragraph of the regulation concerning the appearance of sheds in the Lake Association only.

There is question concerning proposed amendments to **Zoning Regulation Section 6.19 Use of Home for Personal Business** and **Zoning Regulation 9.4 Home Occupations**. Chairman Orefice states that it seems the way the amendments are worded may eliminate the residential character of a neighborhood altogether which would be a major change if that's what the intentions are.

Zoning Chair Michelle Rewenko addresses the Commission and gives background on what the Zoning Commission was thinking on formulating these regulations. The Zoning Commission checked with LUC Redmond to find out where some complaints were taking place and reported that there have been complaints on chickens entering onto neighboring properties and destroying or making a mess of the property so the Commission began with proposed amendments to **Zoning Regulation 6.5 Keeping of Animals** to add that chickens would have to be contained on one's property by pens or fencing if necessary.

With **Affordable Housing**, Zoning Chair Rewenko reports that there's currently nothing in the Zoning Regulations about Affordable Housing so the Zoning Commission wanted to tackle it this year and just needed a starting point. The Zoning Commission looked at Litchfield and other town's regulations and modeled the proposed amendment wording off of that research, primarily using the Town of Litchfield's regulation. Town Atty. Michael Rybak was contacted for his opinion on the proposal and made comment. She notes that this proposed amendment is certainly open to feedback but the Zoning Commission wanted some guidance if an application for Affordable Housing came in.

Zoning Chair Rewenko continues by explaining that there are new definitions to be added to Zoning Regulation 2.3 for *Affordable Housing*, *Set Aside Development* and *Median Income*. The Zoning Commission looked at **Zoning Regulation Section 4.7.2 – Special Permit Uses in Multifamily Zone** to add **Section 4.7.2c** to allow for **Affordable Housing**. Zoning Chair Rewenko reads the current Section 4.7.2 which allows by Special Permit for dwellings (single, two family or multifamily) including condominiums as defined under the Common Interest Ownership Act, CGS. Section 4.7.2 also allows by Special Permit parking, recreation and accessory structures associated with the development and limited to the use of the residents. The Zoning Commission is adding 4.7.2c. to allow for Affordable Housing. P. Roche questions the proposed wording that an eligible applicant is being limited to only three entities; the Town of Harwinton, A Community Housing Development Corporation and a Local Non-Profit Organization. He questions if it is the Zoning Commission's intent in not allowing private developers to apply for Affordable Housing? Zoning Chair Rewenko states that the proposal may have been modeled after Litchfield to which Atty. Rybak agrees that this is in fact Litchfield's regulation and notes that their regulation has been accepted in Litchfield since 1990 and has been successful. P. Roche questions Atty. Rybak on whether he thinks it's legal to omit private developers? Atty. Rybak states he doesn't know. P. Roche questions if Atty. Rybak is aware of any other towns that have similar regulations that exclude private developers with Atty. Rybak stating, he doesn't know. He states that he did suggest to LUC Redmond to reach out to other towns and review their regulations on Affordable Housing besides Litchfield. He states that Litchfield has Affordable Housing in their regulations, has a Housing Trust, and has 50 Affordable Housing units but that doesn't mean a private developer can't go in and make application under State Statute and propose a regulation change that would add **D.) Private Developer** and then the burden of proof shifts to the town to show why that isn't an appropriate amendment to the Zoning regulations. Any developer could propose Affordable Housing in a conventional subdivision



application and use a community septic system to do it and then the burden of proof shifts to the town under the appeal statute. Atty. Rybak states that the only areas “safe”, is when an application is reviewed under Wetlands who would have to consider sewer and wetlands for public health considerations. Anyone can propose and any one can force an amendment under the Affordable Housing appeal statute. Zoning Chair Rewenko states that going back to the septic matter, the Zoning Commission chose the Multi Family zone to allow for Affordable Housing because the Commission looked to areas that could accommodate a large population. P. Roche states, in looking at Section 4.7.2 thru 4.7.5, which is all from Litchfield, has Litchfield ever been challenged? Atty. Rybak states, no, that no one but the Housing Authority has had any interest in Affordable Housing in Litchfield. Chairman Orefice questions how many Affordable Housing units Litchfield has with Atty. Rybak answering over 50 now. Chairman Orefice questions how many Affordable Housing units does Harwinton have with Atty. Rybak answering, none, but Harwinton has Affordable Housing but not development by a non-profit or private developer. P. Roche states that the last time the Planning Commission had concerns over Section 4.7.5, limiting this type of development to places that have public water systems, which those places are far and few between in town, would that be a problem and would stick out to a developer to say they’d sue based on that. Atty. Rybak states, no, under the Avalon Farms case, though he is unsure of what town it took place in, developers tried to force an extension of a sewer line to land beyond the sewer line and the Supreme Court upheld the town’s right to say, “we could only take so much sewage in town, we have to keep capacity at the plant” and Harwinton is especially vulnerable because we have to buy all capacity at the WPCA plant.

Chairman Orefice gives opportunity to members of the public to comment to which there is none at this time.

Zoning Chair Rewenko refers to **Zoning Regulation 6.17 Storage Sheds** noting that the Lake Harwinton Association has their own set of regulations and the Zoning Commission felt it’s not consistent to have appearance of sheds in the town’s regulations. The part of the regulation to be deleted pertains to the requirement that the sheds must be kept in good repair and appearance and suitably painted.

Zoning Chair Rewenko reads current **Zoning Regulation 6.19 Use of Home for Personal Business** explaining that the Zoning Commission wanted to expand a bit and allow for one outside employee but continue with the present restriction of no clients coming to the home. The Zoning Commission believed this would bring working at home “up to the times” and give more freedom to those that do work at home but also adds some restrictions including storage of material and use of equipment.

Zoning Chair Rewenko reads current **Zoning Regulation 9.4 Home Occupations** and again explains that the current regulation is a little restricted with no employees other than members of the family allowed. The new proposed wording allows for two nonresident employees working on the premises and also allows for no more than two clients coming to the premises during the hours of operation set by conditions of approval by the Zoning Commission. Zoning Chair Rewenko points out that there is currently conflict in the Zoning Regulations where under Section 4.2e Special Permit Uses in a Country Residential zone and Town Residential zone that allows for “Professional office for the owner occupant and not more than *two non-resident employees* on the premises at any one time in a single family dwelling.” which contradicts current Zoning Regulation Section 9.4.3 that states “There shall be *no outside employee other than members of the resident family.*”

P. Roche questions whether the proposed wording of Zoning Regulation 6.19 Home Based Business, Minor was based on Litchfield’s Zoning Regulation? Zoning Chair Rewenko states she is not sure if it was Litchfield or another town but believes it may have been from Canton’s Zoning Regulations.



P. Roche refers to traffic characteristics mentioned in proposals for Section 6.19 and 9.4 and questions how any changes to the neighborhood because of home occupations would be monitored? Zoning Chair Rewenko states that if complaints come in, the Zoning Commission would direct the Zoning Enforcement Officer to investigate.

Chairman Orefice, states, as a hypothesis, what if his neighbor opens a home business and employs one person from the outside. Can he, as a resident, argue that that now changes the characteristics of traffic in the neighborhood? He realizes it's far-fetched but it could be an issue and would residents then have to turn to the town attorney when problems arise? Zoning Chair Rewenko believes if there were to be excessive traffic, and everyone in the neighborhood was complaining, it could become a problem.

R. Perreault states that based on Zoning Regulation 6.19, how many complaints have been received in the last one to three years concerning working at home or home occupations. Zoning Chair Rewenko believes only one. R. Perreault states, with only one complaint, this proposal doesn't help the town one bit and even with the regulation as it is now, he questions if the town demonstrated to residents that the complaint was enforced? He doesn't think so and believes this proposal isn't going to make it any easier to enforce. He notes that one thing we [Commissioners] have all have pledged is to keep the rural characteristics of Harwinton but he doesn't see it with this proposal. He sees this as really liberalizing what residents can do and he feels the proposal will create more complaints. He questions what is driving this and it is his belief that this is sending a wrong message to residents on what can and can't be done. There is a current regulation in place that hasn't been challenged in years. Zoning Chair Rewenko states that the driving force is that there are more people who work at home these days and getting away from the office environment. R. Perreault questions if anyone has complained about this current regulation and questions what type of business is being talked about. A tax preparer isn't going to have a 20,000 pound vehicle on the property. P. Roche, referring to the proposal for the size of vehicles permitted, questions if there could be a lower weight limit that could be allowed and is it necessary to even have such a huge truck at a residence. He believes Zoning should go back and research this more.

Atty. Rybak states that he did receive the proposals from LUC Redmond and the only one he was involved in previously was Affordable Housing which he consulted with Atty. Byrne on and received comment from him, which he will discuss later in the meeting. He states he can understand why the EDC would like to see loosening of regulations but that home-based business should mean the operator of the business lives there. The business should be conducted inside the residence and give no outward appearance of other than a residence and there should be no outside storage of wares or equipment. With outside employees, Atty. Rybak notes that the town did have a problem years back on Hill Road where employees came to the property, got into trucks and those trucks were left idling on mornings before leaving. When you get to the professional type home occupation, he doesn't see what would be deadly to a neighborhood to have a paralegal or administrative assistant coming in that doesn't disrupt the neighborhood. What is unsettling to him is Minor versus Major Home Occupation. Where do you draw the line between commercial and residential?

P. Roche refers to Home Occupation, Minor and in particular Section 6.19c. and 6.19f., that both refer to equipment outdoors beyond what is normal to a single family residence. He questions, what is *normal* to a residence and what does that mean? Section 6.19c also states that anything more than what is normal to a single family residence must be kept undercover. What does undercover mean? And does that mean anything can be kept on the property as long as it's undercover? P. Roche asks if Atty. Rybak thinks that these two regulations, Home Based Business, Minor and Major should be combined with Atty. Rybak stating, yes, it would be better to have one category of Home Occupation.

Chairman Orefice questions if the proposed Regulation 6.17 eliminates residential zoning with Atty. Rybak stating yes, to a certain extent. By Special Permit, you are allowed to carry on a limited commercial activity, but when Zoning came to Harwinton in 1955 there were a lot of businesses conducted out of homes and was considered permitted. He believes in this day and age the town should continue this flexibility.

Zoning Chair Rewenko reads the proposed amendment for **Zoning Regulation 9.4 Home Occupation, Major.**

Chairman Orefice speaks of the proposed Home Occupation regulation and parking requirements and the possible need for ADA compliance for parking and access into homes. He questions whether there should be buffer requirements in order to protect neighbors from viewing traffic/foot traffic, which might avoid giving the neighbor, who may not be in agreement to what is going on, to make complaints to the town. R. Perreault believes that allowing clients and employees into the home turns the residential property into a commercial property. P. Roche states that the new provision allowing for two clients to come to the home is ambiguous and referring to Zoning Regulation 9.4.2 again questions what is “normal”. He believes that 9.4.2a regarding traffic flow is also ambiguous. He believes many of these proposals should be carefully detailed.

Chairman Orefice states that he is sensing from the Planning Commissioners that their report may not be a favorable one in which case the Zoning Commission will have to have a unanimous or 2/3 vote in order to pass these proposed regulation amendments.

Atty. Rybak informs the Commission that he has been in contact with Atty. Steven Byrne and reads an email from Atty. Steven Byrne, Byrne & Byrne LLC who gave his opinion in response to Atty. Rybak’s request. Atty. Byrne’s email states, *“In my experience, affordable housing zoning regulations allow this use only where the developer can show he can hook up to public water and sewer. The PZC usually creates an incentive housing or mixed use zone which has access to public water, sewer and transportation as well as public transportation, and then allows by special exception affordable housing. The plan is to direct developers to those parts of town. Limiting the class of entities that can file an application goes against zoning [regulate land use, not the land user]. If you have a suitable place in town for this type of housing, why try to keep out a private developer who may then be forced to go where you don’t want him/her to go.”*

Myrna Watanabe, 155 Woodchuck Lane, member of the public, refers back to the Home Occupation proposal and questions what does “live on the property” mean as stated in the proposal for Home Occupation – Major. It should be worded so the home doesn’t remain vacant and become just a business. Perhaps wording should read, “Be a full time/year round resident.”

With no further comments P. Roche **motioned** that the Planning Commission’s 8-3a(b) Referral is as follows:

That the Planning Commission recommends **against** proposed Regulation 4.7.2 (calling for Affordable Housing to be permitted in Multi-Family zones only) because they feel it is against the town’s Plan of Conservation and Development. (\*see amended motion below.)

That the Planning Commission is in **approval** of and recommends **proposed Zoning Regulation 6.5 Keeping of Animals** (calling for keeping of poultry to be contained on one’s own property by use of pens or fencing if necessary).

That the Planning Commission is in **approval** of and recommends proposed Regulation 6.7 (to delete the first paragraph of the regulation concerning the appearance of sheds in the Lake Harwinton Association) as long as the proposal is agreed on by the Lake Association.

That the Planning Commission recommends **against** proposed Regulation 6.19 and Regulation 9.4 (concerning Home Occupations Minor and Major) and recommends that the two regulations be combined and thoroughly revised. That Section 9.4 goes against the town's Plan of Conservation and Development and threatens the rural character of the town.

R. Perreault seconded the motion and it passed unanimously.

Michael Rybak questions whether the Commission would give a favorable recommendation to the proposed regulation on **Affordable Housing** if Subsection c.d was included allowing a "Private Developer" to be an eligible applicant? The Commission is in agreement and P. Roche **amends his motion** stating if 4.7.2c.d was added to allow Private Developers who meet criteria to make application, the Planning Commission then recommends this change.

R. Perreault seconded the motion to amend the original motion and it passed unanimously.

P. Roche states for the record that the Planning Commission would have to revisit Section 9.4 Home Occupations if it is reworded greatly.

**4. DISCUSSION – FEEDBACK ON REGIONAL DRAFT PLAN OF CONSERVATION AND DEVELOPMENT. REVIEW FORM DUE TO NHCOC BY 9/15/17.**

P. Roche states that he reviewed the Draft and that it appears to be consistent with the town's Plan of Conservation and Development. R. Perreault states that there are many things in the Draft that can shape Harwinton's next Plan of Conservation and Development. Chairman Orefice notes that he likes that NHCOC created a checklist for changes. Chairman Orefice completes the Review Form in accordance with NHCOC's request and it will be forwarded back to them by LUC Redmond.

**5. OLD BUSINESS.**

None.

**6. NEW BUSINESS.**

Atty. Rybak discusses with Commissioners the property at 145 Litchfield Road, owned by Marion Thierry. He is attorney to Marion Thierry and Peter Thierry but is not speaking on behalf of his clients but only as a town resident. He discusses The Agreement that is filed in the land records pertaining to the driveway found under Volume 97/Page 826). The Planning Commission requests that First Selectman Michael Criss and other Selectmen attend the next Planning meeting to be held on September 27, 2017 to discuss the Thierry property and the possible interest the town may have in it. LUC Redmond will relay this information to the First Selectman.

**7. ANY OTHER BUSINESS.**

Jeff Neumann, Building Inspector and ZEO Tom Mitchell are present to discuss the matter of 485 Plymouth Road where a 20 stall horse barn was built on 15 acres. The barn was built prior to a resubdivision of Equestrian Estates but the resubdivision may have left the lot nonconforming under Section 6.5 Keeping of Animals and the number of horses allowed on the property. They are just suggesting that the Planning Commission, when reviewing applications for subdivisions or resubdivisions should include review of buildings that may be left non-conforming.

**8. CORRESPONDENCE.**

None.

**9. INVOICES.**

None.

**10. ADJOURN.**

P. Roche **motioned** to adjourn the meeting at 9:25 p.m., seconded by M. Rewenko. Motion passed unanimously.

Respectfully submitted,

Polly Redmond, Land Use Coordinator

RECEIVED FOR RECORD AT HARWINTON CT  
ON 9-21-17 AT 12:30 PM  
ATTEST NANCY E. ELDRIDGE TOWN CLERK