

**HARWINTON ZONING COMMISSION**  
**MONDAY, AUGUST 27, 2018**  
**TOWN HALL 7:00 P.M.**

Present: Chairwoman Michelle Rewenko, Cynthia Kasey, Daniel Thurston, Matthew Szydlo, Deborah Kovall, Alternate Member Don Truskauskas, Alternate Member Theodore Root, Alternate Member Nancy Schnyer and Land Use Coordinator Polly Redmond

PLEDGE OF ALLEGIANCE

**PUBLIC HEARING #1**

**1. OPEN HEARING – ESTABLISH QUORUM.**

Chairwoman Rewenko called the hearing to order at 7:00 p.m. All regular members present are seated.

**2. BUMPER BROOK ESTATES, LLC – PETITION TO AMEND ZONING REGULATIONS, DATED 11/20/17, SECTION 2.3 DEFINITION OF ELDERLY HOUSING AND SECTION 9.9 ELDERLY HOUSING.**

Chairwoman Rewenko reads the call to hearing as published in the Republican American on 8/17/18 and 8/24/18. NHCOC Referral Response has been received and finds “no apparent conflict with regional plans and policies or the known concerns of neighboring towns.” Chairwoman Rewenko reads the 8-3a(b) Report of the Planning Commission for the petition to amend the Zoning Regulations, Section 2.3 and 9.9. Their report, dated 7/11/18 is as follows: Pursuant to State Statute 8-3a(b), the Planning Commission recommends to the Zoning Commission to amend Zoning Regulations 2.3 and 9.9 and recommends they accept the proposed text amendments with the changes noted by the Planning Commission to Section 2.3 to omit the word “or” to read only “and” in relation to conforming to FFHA and State and Town requirements and to Section 9.9.2 to add the wording “at least” in relation to ratio of parking spaces.

Atty. William J. Tracy, Furey, Donovan, Tracy & Daly, P.C., Bristol, CT is present to represent the applicant and recalls the first application submitted to this Commission to amend the Zoning Regulations for elderly housing which culminated in discussions at the hearings with Town Atty. Michael D. Rybak present and the Zoning Commission prompting him to craft a different amendment for the elderly housing Regulation. Atty. Tracy submits a copy of the May 29, 2018 Zoning minutes because it contains that discussion held and includes Atty. Rybak’s comments. Atty. Tracy notes that there is considerable support within the town’s Plan of Conservation and Development on pages 74, 76 and 80 that speaks of the need for elderly housing and diversified housing in town and he adds that the State’s POCD also supports incentive housing. Atty. Tracy addresses the two types of provisions for elderly housing; one is where all occupants are 62 and older and the other is for 55 and older and only one tenant has to meet that requirement. He states that 80% of the project could be 55 and older but the developer can set the age limit for the other 20%. Atty. Tracy notes that when his client applies for construction of this development the occupants will all be 55 and older. The proposal to change the definition of Elderly Housing in Section 2.3 is because he believes the town’s definition should mirror the Federal Law and that is the reasoning for this proposal.

Atty. Tracy states that after the public hearing was held on the first application submitted, which was withdrawn on 6/25/18, he reviewed Section 9.9 Elderly Housing and changed some of those regulations in order to allow a private developer to do what the town can already do, so he removed the wording “town-sponsored” from the heading. He reviews the sub-sections at this time noting changes made to Section 9.9.2 that includes replacing the word “spaces” to “cars”. Also, Section 9.9.3 wording is new language for limiting

elderly housing to sewer and water areas but allowing for the town to use well and septic as approved by the Torrington Area Health District. Section 9.9.8 has different wording to reflect the sewer and water connection requiring approval by the Harwinton WPCA unless the elderly housing is town-sponsored which shall then require approval by the TAHD or, if necessary, by the DEEP. Section 9.9.10 a. through e. has some changes in order to tidy up the language because of redundancies within Section 8 Site Plan requirements so Atty. Tracy states he removed some of what exists under Section 9 Elderly Housing. Section 9.9.12 through 9.9.16 are new sections not found in the existing Elderly Housing regulation so language was borrowed from Zoning Regulation 4.7 regarding drainage design, architectural design and access way construction and was implemented into this proposed regulation. Section 9.9.16 is added for the provision of longevity of an approval which will be 20 years. He explains that an applicant coming in proposing this type of project would be getting a Special Permit for an elderly housing project meeting the definition. If they were to change that to a different type of multi-family use, they would have to get a modification of the Special Permit. There was some thought that it might not be enough though so there was thought that a restrictive covenant deed locking it up as elderly instead of a different kind of multi-family for a 20 year period of time would prevent someone coming in for an elderly housing project and then a couple of years later decide they'd rather have a multi-family. The provision that a Restrictive Covenant shall be submitted with the application to construct and shall be subject to review and approval by the Commission and its attorney is part of Section 9.9.16. In closing, Atty. Tracy states that he has collaborated with Town Atty. Michael Rybak on these amendments; therefore he has seen these proposals and is okay with them. Atty. Tracy notes that the proposal went before the Planning Commission and they have endorsed it.

Chairwoman Rewenko refers to proposed Section 9.9.4 where the lot area is 35% but notes that in Section 5 under the Town Residential zone, the lot coverage is 15%. Atty. Tracy states that in order to do a multi-family project, with multiple buildings, you will end up with greater coverage and the lot coverage would exceed the 15% unless it was to be built on a large parcel. He states that folks looking to live in this type of development are not looking for the large house with the large lot and a lot of maintenance. They want to downsize and don't want the big lawn. Chairwoman Rewenko notes that in the next public hearing to follow, the applicant is looking to change the zone to Town Residential and that the 35% lot coverage wouldn't meet the requirements of that zone because lot coverage states 15%. Atty. Tracy states that the 35% would only be in the Elderly Housing Regulation Section 9.9 and would only apply to that Special Permit, it would not apply to any other development in the Town Residential zone.

D. Truskauskas wishes to clarify with Atty. Tracy a question he has that alternate members who are not seated at a public hearing can participate and ask questions because they may be called on to vote later with Atty. Tracy stating that there is a case that states alternates can't take part in the deliberations unless they are seated. D. Truskauskas states that that is also his understanding.

D. Truskauskas questions that since they are proposing to do 100% elderly with this project, do these proposed regulations require every applicant to do 100% or will a future applicant have the opportunity to come in with an 80% elderly and the Commission would be required to approve that. Atty. Tracy states that the Commission would be required by federal law to allow the applicant to make that determination.

D. Kovall questions why the definition of elderly housing in Section 2.3 is for both 55 and older and for 62 and older with Atty. Tracy explaining that it can be done either way by Federal Law where everyone is over 62 or it is setup for 55 and at least one person is over 55. D. Kovall asks if that is so the Commission can determine with Atty. Tracy stating the law allows the applicant to make that decision; does the applicant want

to come in with a community that is solely 62 and above or does the applicant want to come in with a community that is based on the 55 standard. The Federal Law gives developers that choice. He notes that right now the town's definition only allows one of the two and he believes the regulation should allow the applicants the choice between the two of them just as the Federal Law does. Scott Bayne, S&W Custom Home Builders, the applicant, is present and explains that under Federal Guidelines there was a program for Section 8 elderly housing that started at age 62 so they started a classification for subsidized elderly housing but mandated they be 62 or older and not 55, so that's why they may have split the age categories.

M. Szydlo questions what the law says about how long Restrictive Covenants are in place and why 20 years was chosen for the proposed regulation with Atty. Tracy replying that there isn't a law and 20 years is an arbitrary number he chose. D. Truskauskas questions what happens after the 20 years with Atty. Tracy answering there would have to be a modification of the Special Permit. T. Root questions why even put the 20 year longevity clause in then with Atty. Tracy stating that it came from discussion during the public hearing of the first submission for text amendment proposals submitted by Bumper Brook Estates, LLC and with Town Atty. Michael Rybak at that hearing. D. Truskauskas states that 20 years isn't that long and that he would hate to see the development become just multi-family with no elderly housing aspect to it. He questions whether in 20 years it would be able to be changed to just multi-family with Atty. Tracy stating it would be complicated to do so.

Chairwoman Rewenko opens the floor to public comment at this time.

Dennis Baerny, 5 Twenty-four Bumper Road, refers to Section 2.3 Definition and asks if there is a minimum age that can reside in the unit, i.e., can a 12 year old grandchild be brought in to live there with their grandparent. Atty. Tracy replies yes, that can happen as long as one occupant is 55 and older. In terms of school impact, he uses as an example that in his neighborhood of 16 homes, the number of school-aged children in the neighborhood has dropped over the years but there are still 16 homes.

There are no further comments from the public, the Commissioners, or Atty. Tracy at this time.

### **3. CONTINUE OR CLOSE HEARING.**

M. Szydlo **motioned** to continue the public hearing to Monday, September 10, 2018 at 7:00 p.m., seconded by D. Thurston. Motion passed unanimously.

## **PUBLIC HEARING #2**

### **1. OPEN HEARING – ESTABLISH QUORUM.**

Chairwoman Rewenko called the hearing to order at 7:30 p.m. All regular members present are seated.

### **2. BUMPER BROOK ESTATES, LLC – PETITION FOR A ZONE CHANGE FROM LIGHT INDUSTRIAL TO A TOWN RESIDENTIAL ZONE, TWENTY-FOUR BUMPER ROAD, ASSESSORS MAP NOS. A8-03-0003, A8-03-0004 AND A8-03-0006,**

Chairwoman Rewenko read the call to hearing as published in the Republican American on 8/17/18 and 8/24/18. NHCOC Referral Response has been received and finds "no apparent conflict with regional plans and policies or the known concerns of neighboring towns." Chairwoman Rewenko reads the 8-3a(b) Report of the Planning Commission for the petition to amend the Zoning Regulations, Section 2.3 and 9.9. Their report,

dated 7/11/18 is as follows: Pursuant to State Statute 8-3a(b), the Planning Commission recommends to the Zoning Commission that property located on Twenty-four Bumper Road, listed on the Assessor's Map as A8-03-0003, A8-03-0004 and A8-03-0006 be changed from a Light Industrial zone to a Town Residential zone based on the fact that The Plan of Conservation and Development calls for more elderly housing in town and that this change of the zone would facilitate that change.

Atty. William J. Tracy, Furey, Donovan, Tracy & Daly, P.C., Bristol, CT is present to represent and refers to a map he has presented on a board for viewing purposes. He explains that the site was formerly used as a transmission station for radio but has since been left unused and has experienced problems with dumping. He notes that there is Town Residential land in Harwinton to the east so the zone change is not to be considered spot zoning. On the Torrington side of the parcel it is zoned R-15 which is also compatible with residential land. The property has utilities, water and sewer connection and he has been meeting with Harwinton WPCA regarding sewer connection. Atty. Tracy states that the application to construct the elderly housing units is before the Harwinton IWWC at this time so the engineering work has been done.

Chairwoman Rewenko opens the floor to public comment at this time to which there is none.

At this time, LUC Redmond asks that Atty. Tracy state for the record that he did not give notice to neighbors within 200 feet of the property lines of the zone change application. Atty. Tracy replies that he did not and that the Town of Harwinton's Zoning Regulations do not state that requirement.

M. Szydlo questions whether changing the zone for construction of elderly housing puts the town at risk or in a bad position for the future with Atty. Tracy stating that the Commission should keep in mind that a series of steps would be required to bring a zone to Town Residential. This property subject to this application is in a residential neighborhood. If other applicants come in with a zone change request, the Commission looks to see if it's a good fit and looks to see if it meets the Site Plan requirements of the Zoning Regulations, so it will be site specific allowing the Commission to look at it with far more detail.

D. Truskauskas states that this seems to be a pretty simple application but questions Atty. Tracy if he would like this hearing to remain open and go hand in hand with the public hearing for the text amendments. Atty. Tracy states that he would like it to go hand in hand together.

There are no further comments from the public, the Commissioners, or Atty. Tracy at this time.

### **3. CONTINUE OR CLOSE HEARING.**

C. Kasey **motioned** to continue the public hearing to Monday, September 10, 2018 immediately following the first public hearing for the proposal of text amendments submitted by Bumper Brook Estates, LLC, seconded by D. Thurston. Motion passed unanimously.

## **REGULAR MEETING**

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

Chairwoman Rewenko called the meeting to order at 7:50 p.m. All regular members present are seated.

**2. APPROVE MINUTES OF PREVIOUS MEETING: 8/13/18**

M. Szydlo **motioned** to approve the minutes of the previous meeting with correction to Page 5, line 20 to read: “D. Kovall states that she *didn’t* read the log...” The sentence should read, “D. Kovall states that she **did** read the log...” D. Kovall seconded the motion and it passed unanimously.

**3. PUBLIC COMMENT.**

None.

**4. DISCUSSION/POSSIBLE DECISION - THE EDISON GRILL, LLC, 178 BIRGE PARK ROAD – APPLICATION TO MODIFY A SPECIAL PERMIT GRANTED BY THE ZONING COMMISSION ON APRIL 8, 2013 AND SPECIFICALLY CONDITION (3) IN ORDER TO ALLOW FOR LIVE ENTERTAINMENT. PUBLIC HEARING CLOSED 8/13/18.**

M. Szydlo states that with discussion at the last Zoning meeting he believes they could come to a compromise. Chairwoman Rewenko states that she believes there’s no problem with indoor live entertainment but the Commission may want to limit the number of times outdoor live entertainment/music is played throughout the year. She asks Commissioners for their thoughts on the indoor music and live entertainment at this time. C. Kasey states that she is okay with indoor live entertainment as long as it doesn’t exceed the maximum decibel range of 55Db that is allowed for that zone. M. Szydlo states his belief that indoor entertainment would be less of an intrusion. Chairwoman Rewenko states that the Commission did discuss a cutoff time of 9:00 p.m. D. Kovall states that it is interesting that there is music from a radio playing inside and outside already and that it was measured with a decibel reader, even at the edge of the property line, with a reading of 55 Db. She also notes that the neighbors who spoke at the public hearings in this matter never mentioned the music on the patio, only the people talking, which says to her that people are louder than the music playing. She states she is in favor of a compromise limiting the outdoor live entertainment to the summer months, special events, and perhaps adding in another weekend or two. She states she doesn’t see how the music would be a problem with the owner monitoring the noise level and if he doesn’t, the ZEO will be receiving complaints. M. Szydlo states that he sees both sides; to have music makes sense but on the flip side, there was a condition placed on the approval of The Edison Grill not to have live entertainment and he wonders about “scope creep”. Will there be a little more, and then a little more? He likes the idea of a compromise though and notes that he doesn’t see indoor music as a problem. C. Kasey notes possible conditions that have been discussed as follows:

To allow for indoor live music and entertainment until 9:00 p.m. with noise levels not to exceed 55 decibels and outdoor live music and entertainment to have the following conditions:

1. Live music and entertainment shall not exceed 55 decibels.
2. Live music and entertainment will cease at 9:00 p.m.
3. Live music and entertainment will be allowed only between the months of May through September.
4. Live music and entertainment will be allowed up to a maximum of eight (8) times during the months noted in Item 3 above.

LUC Redmond will type up a draft Memorandum of Decision and at the request of the Commission, send it to Town Counsel Michael Rybak for his review and comment. Discussion will continue at the next Zoning Meeting scheduled for Monday, September 10, 2018.

**5. DISCUSSION/POSSIBLE DECISION – BUMPER BROOK ESTATES, LLC – PETITION TO AMEND ZONING REGULATIONS, DATED 11/20/17, SECTION 2.3 DEFINITION OF ELDERLY HOUSING AND SECTION 9.9 ELDERLY HOUSING.**

No discussion.

**6. DISCUSSION/POSSIBLE DECISION – BUMPER BROOK ESTATES, LLC - PETITION FOR A ZONE CHANGE FROM LIGHT INDUSTRIAL TO A TOWN RESIDENTIAL ZONE, TWENTY-FOUR BUMPER ROAD, ASSESSORS MAP NOS. A8-03-0003, A8-03-0004 AND A8-03-0006.**

No discussion.

**7. THOMAS BECKMAN – APPLICATION FOR GRADING FOR RIDING ARENA, 65 HARWINTON HEIGHTS ROAD.**

No one is present to represent.

**8. JOHN THEROUX -- APPLICATION FOR 12' X 42' SHED, 81 HAYDEN ROAD. AFTER THE FACT ACTIVITY.**

John Theroux is present and a sketch is provided showing the location of the 12' x 42' shed that replaces an old 12' x 20' shed in the same location. The applicant is requesting a waiver of providing an engineered plan. Distances measure 70 feet to the side property line and 80 feet to the rear property line meeting the setbacks of the Town Residential zone. TAHD approval has been received. IWWC approval has been received by Agent approval. M. Szydlo **motioned** to approve the request for the waiver of an engineered plan, seconded by D. Thurston. D. Kovall **motioned** to approve the application, seconded by C. Kasey. Both motions passed unanimously.

**9. RON CONROY – APPLICATION FOR PLACEMENT OF FOUR (4) 8' X 40' TEMPORARY STORAGE CONTAINERS ON VACANT LAND, VALLEY ROAD, ASSESSORS MAP NO. B2-02-0005.**

No one is present to represent.

**10. COMPLAINTS/ENFORCEMENT ACTIONS.**

Follow up on complaints: Ralph Johnson, 508 Hill Road

Fernando Nieves, 222 Woodchuck Lane

ZEO Thomas Mitchell has sent a report stating that he visited 508 Hill Road and instructed Ron Conroy, occupant of the house owned by Ralph Johnson, to apply for a permit for the shed placed on the property and that the shed must be relocated to meet the setbacks of the Country Residential zone. ZEO Mitchell also noted commercial dump trucks on the property, a backhoe and several junk vehicles located out behind the house where the area of stone and millings was created. This area has been created over an old dirt road that extends down in to the woods. There is a steep drop off from the area of rock and millings to the forest floor of approximately 20 to 30 feet. D. Kovall **motioned** that a Notice of Violation is to be sent to the property owner, Ralph Johnson, to start the enforcement process as there are clear violations taking place on the property. M. Szydlo seconded the motion and it passed unanimously.



ZEO Thomas Mitchell's report states that he spoke with Fernando Nieves of 222 Woodchuck Lane regarding attending a zoning meeting to present driveway plans in regards to stone placed down and extended at top of the paved apron. He reports that Mr. Nieves said he would come to the land use office and take care of what needs to be done for the crushed stone placed down. The report states that Mr. Nieves made mention to him of other properties on Meadowview Drive that have company signs out in front of their yards and questions whether complaints were made about those. ZEO Mitchell's report states he informed Mr. Nieves that he did not receive any complaints about them and that he did drive down Meadowview Drive and noticed the signs.

Six neighbors who live on Meadowview Drive are in attendance and again, as they did at the last Zoning meeting, state that they believe the property at 222 Woodchuck Lane is being used as a business in a residential zone. A neighbor had sent pictures and an email to the First Selectman's office which was then forwarded to the Land Use office. The email states that the Zoning Commission informed the neighbors at a previous meeting that there were no violations on this property and that perhaps there was an option of filing a blight complaint. The Board of Selectman's office informed the Land Use office that this does not qualify as blight. Pictures accompanying the email show a pickup truck and a van parked in the side yard of 222 Woodchuck Lane which also has frontage on Meadowview Lane. Another picture shows the same two trucks with the name of the business, Nieves Home Improvement, on them and this is the reason why the neighbors believe a business is being run out of the home. A third picture shows a small trailer with a ladder laid down on the top with no business name on it. The email states "it is most evident to me and other neighbors that he in fact is using this property for his business vehicles, which makes me believe that he is running the business from his home." Neighbors who are present note that Zoning Regulation 6.19 is being violated because it states, "a reasonable neighbor would not know that such an operation is taking place." They claim that the trucks being parked on the property is obvious that a business is taking place at 222 Woodchuck Lane. Some of the neighbors present state that the trucks are an eyesore and that there are employees that get into the trucks and drive off, returning at the end of the day and who sit on the curb waiting to be picked up.

C. Kasey **motioned** that the ZEO is to issue a Notice of Violation to the property owner, Theresa Nieves, for after the fact driveway construction if the driveway in fact has 30 feet of gravel placed down beyond the 10 foot paved apron. D. Kovall seconded the motion and it passed unanimously.

ZEO Thomas Mitchell's report also refers to property at 179 Woodchuck Lane, owned by the Cindy and Terry Vogel, who will be coming to the Land Use office for an application for an existing accessory use. The Vogels will need to contact the building inspector regarding a deck and stairs leading to the accessory apartment.

#### 11. **ANY OTHER BUSINESS.**

LUC Redmond questions if Thomas Beckman, 65 Harwinton Heights Road, needs to attend a Zoning meeting and make application for the creation of a riding arena since grading would probably be minimal. Commissioners are in agreement that they would like to have Mr. Beckman attend a Zoning meeting to answer any questions they may have including location and the extent of grading that will take place.

LUC Redmond informs the Commission that the approval granted to the Water Pollution Control Facility on Bogue Road has expired this past July. Jeff Preble, P.E., Wright-Pierce, called the Land Use office to ask if a new application would be required. Commissioners agree that if no major changes were made to the site plan, then the approval is renewed for another year.

LUC asks the Commission for clarification on temporary storage buildings used to store tools on properties that have approvals to construct homes but the homes have not been built yet. Commissioners agree that Zoning Regulation 6.9 allows for a storage building/trailer to be placed on a property if it is in connection with a bona fide construction operation for a period not to exceed six (6) months with renewals that may be granted for additional six (6) month periods. Temporary storage buildings are not to be placed in the front yards.

**12. CORRESPONDENCE.**

None.

**13. INVOICES.**

None.

**14. ADJOURN.**

C. Kasey **motioned** to adjourn the meeting at 9:15 p.m., seconded by M. Szydlo. Motion passed unanimously.

Respectfully submitted,

Polly Redmond  
Land Use Coordinator

RECEIVED FOR RECORD AT HARWINTON CT  
ON 8-31-18 AT 9:54 AM  
ATTEST NANCY E. ELDRIDGE TOWN CLERK