

**Chester Planning & Zoning Commission
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The Chester Planning & Zoning Commission held several public hearings on Thursday, March 9, 2017, at the Chester Town Hall, 203 Middlesex Avenue, Chester, Connecticut. In attendance were Jon Lavy, Mel Seifert, Sally Murray, Steven Merola, Keith Scherber, Henry Krempel, Peter Zanardi, Doreen Joslow and Elaine Fitzgibbons (seated for J. Stack). Chairman Lavy opened the first public hearing at 7:30 PM.

Section 40T. Sale of Alcoholic Beverage is amended by deleting subsection (1) in its entirety and substituting in lieu thereof subsection (2) which shall be renumbered as subsection (1).

Seated for this hearing was Lavy, Seifert, Murray, Merola, Scherber, Krempel, Zanardi, Fitzgibbons.

Chairman Lavy noted this was a continued public hearing. He read the following two letters into the record.

Letter from Lower Connecticut River Valley Regional Planning Committee dated January 25, 2017 indicating the changes if adopted will not create any significant intermunicipal impacts or adverse impacts to the environment or ecosystem of Long Island Sound.

Letter from Connecticut River Gateway Commission dated January 27, 2017 indicating approval of all four petitions including the sale of alcoholic beverages.

Chairman Lavy asked for any comments either in favor or in opposition to the application. No one spoke at this time.

Motion by Murray, second by Seifert, to close the public hearing for Section 40T at 7:40 PM. Unanimously Approved.

The second public hearing was opened at 7:41 PM.

Add new Section 117. Medical Marijuana Dispensary and Production Facilities.

Seated for this hearing was Lavy, Seifert, Murray, Merola, Scherber, Krempel, Zanardi, Fitzgibbons.

Chairman Lavy noted this was a continued public hearing. He noted the two letters from Lower Connecticut River Valley Regional Planning Committee and

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Connecticut River Gateway Commission previously read into the record for the prior public hearing also applied to this public hearing.

Mel Seifert submitted information on 4 newspaper articles or TV programs which he either read or watched regarding issues about marijuana facilities – N.Y. Times Business Day 2/2015, U. S. News & World Report 11/25/15, Pew Charitable Trust 3/22/16 and 60 Minutes 6/7/15.

Chairman Lavy asked for any comments either in favor or in opposition to the application. No one spoke at this time.

Motion by Murray, second by Seifert, to close the public hearing for Section 117 at 7:45 PM. Unanimously Approved.

The third public hearing was opened at 7:46 PM.

Secretary Sally Murray read the Notice of Public Hearing into the record for the following 2 public hearings, said notice was published in the Hartford Courant on February 24 and March 3, 2017.

Seated for this hearing was Lavy, Seifert, Murray, Merola, Scherber, Krempel, Zanardi, Joslow, Fitzgibbons.

Amendment to Zoning Regulations, submitted by 46 Deep Hollow LLC, 232 Bradley Street, New Haven, CT 06511 to amend Section 60A.2 Special Principal Uses.

Attorney Christopher Smith from Shipman & Goodwin, Brian Hughes and Andrew Drabkin were present. Attorney Smith introduced himself as the Attorney for the Petitioners for the Amendment to Section 60A.2 Special Principal Uses regarding Accessory Dwellings.

Attorney Smith noted this was a 54 acre farm on Deep Hollow Road. He submitted a packet which included Exhibits A, B and C. Exhibit A was a copy of the Petition to Amend the Zoning Regulations. Exhibit B was a letter from the Connecticut River Gateway Commission dated January 27, 2017. Exhibit C were copies of pages from the 2009 Plan of Conservation & Development relating to Housing and Economic Development. He also submitted copies of letters sent to the Town Clerks of Deep River, Haddam, East Haddam, Killingworth and Lyme, as well as letters to the Lower Connecticut River Valley Council of Governments,

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Connecticut Water and Department of Public Health, pursuant to Sections 8-7d(f) and 8-3b of the Connecticut General Statutes.

Attorney Smith noted when there is a text amendment or Zone change the applicant sustains the burden of establishing that the change or amendment satisfies the Comprehensive Plan and is consistent with the Plan of Conservation & Development and will not result in adverse impact to the public health, safety and welfare.

Attorney Smith noted Exhibit A is the proposed text. Section 60 pertains to Residential Districts. Section A.2 pertains to the Special Permitted Uses in these zones. A Special Principal Use is subject to special exception review and approval as provide in the Zoning Regulations Section 130.

Attorney Smith noted in Section 60A.2.(N), 1st paragraph, they are proposing deletion of the 10 year requirement. Under subsection (1), these are conditions that have to be met under the special exception requirement to obtain approval. This section provides for 1 accessory dwelling unit per principal residential structure. They proposed that if located within a detached accessory building, the accessory dwelling unit shall not be greater than 1,400 square feet nor less than 450 square feet.

Attorney Smith noted Section 60A.2.(N).(6) is a new section. This would allow a second accessory dwelling unit on the property with conditions – 1) principal use must be farm, 2) minimum of fifteen gross acres, 3) occupancy shall be limited to farm personnel and families only, 4) all special exception requirements shall be satisfied.

Mel Seifert asked if the Commission were to find having a second accessory dwelling on a subject property, why would it be limited to a farm. Attorney Smith noted the Commission can always expand this use on its own. They were trying to keep it to their own particular use. Mr. Seifert also questioned limiting it to farm use and the enforcement issue of how the Zoning Compliance Officer is going to confirm who lives there. Attorney Smith noted if the Commission wanted to open this up it could, but not in relation to this particular application. This could be approved for the farm use only and then expanded by the Commission if it wanted to do so. Smith further noted this change was drafted for their particular use.

There was discussion regarding the language “...provided there is no expansion

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of the existing footprint of the accessory building...”. Brian Hughes noted they are proposing in the future for two new barn structures with an accessory dwelling unit. One would be permitted if the 10 year requirement is deleted. The second one would be permissible by the new subsection (6). There was much discussion regarding having an accessory dwelling unit in a new structure vs. an existing structure.

Attorney Royston (Commission Counsel) noted the minor changes proposed during this meeting fall within this public hearing. Any further changes would be substantial and require a new public hearing.

Attorney Smith reviewed Exhibit C referencing the Plan of Conservation & Development, Page 5-13, Recommendations Concerning Housing, #8 and Page 4-18 Recommendations Concerning Agricultural Land #25 and #26.

Attorney Smith reiterated the Petitioners do operate a farm and participate in the local Farmer's Market. There is the incentive and the goals in the POCD to promote agricultural uses. He respectfully noted these changes fall within the stated goals of the POCD.

Madeline Meyer asked why this was being restricted to 1400 square feet. Perhaps it should say 70% of the main house.

The following 5 changes were agreed upon by the Petitioner -

- 1) add to 60A.2(N) - “...provided if it's an existing structure there be no expansion of the existing footprint...”.
- 2) add to 60A.2(N)(1) - “If located within an existing or proposed principal residential structure...”.
- 3) add to 60A.2(N)(1) - “If located within an existing or proposed accessory building...”.
- 4) add to 60A.2(N)(1) - “...the accessory dwelling unit shall not be less than 450 square feet.”
- 5) add to 60A.2(N)(6) - “(iii) occupancy of the additional dwelling unit shall be limited to farm personnel and families only...”.

Chairman Lavy asked for further questions or comments from the public. No one spoke at this time.

Chariman Lavy asked if anyone wished to speak either in favor or in opposition to the application. No one spoke at this time.

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Attorney Smith noted the proposed text amendments are consistent with the Comprehensive Plan as well as the POCD from 2009 and don't result in an adverse effect to the public health and safety. They are trying to eliminate the 10 year requirement for existing detached structures and also have it in either a new or existing detached accessory structure. Also, the 2nd unit would be limited to be associated with a farm use on a large parcel. This would also be subject to special exception approval.

Chairman Lavy read into the record the portion of the letter from the Lower Connecticut River Valley dated January 25, 2017 referencing Section 60A.2 Accessory Dwelling Units. He also read into the record the portion of the letter from the Connecticut River Gateway Commission dated January 27, 2017 again referencing Section 60A.2.

Motion by Seifert, second by Murray, to close the public hearing for Section 60A.2 at 8:30 PM. Unanimously Approved.

The fourth public hearing was opened at 8:31 PM.

Sally Murray previously read the Notice of Public Hearing into the record which included the following Petition to Amend the Zoning Regulations. Said notice having been published on February 24 and March 3, 2017.

Amendment to Zoning Regulations, submitted by Clear Water Holdings, LLC, Hull Management, LLC and John Schiavone, c/o Clear Water Holdings 60 Airport Industrial Park Road, Chester, CT 06512 to amend Section 80 Research & Light Manufacturing.

Seated for this hearing was Lavy, Seifert, Murray, Merola, Scherber, Krempel, Zanardi, Joslow, Fitzgibbons.

Attorney Ed Cassella introduced himself as representative for Clear Water Holdings, LLC, Hull Management LLC and John Schiavone regarding amendments to Section 80 Research & Light Manufacturing.

Attorney Cassella reviewed the following -

Section 80A.1 were General Principal Uses that must meet requirements and standards of Section 80.B.

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Section 80A.2(B) was more for clarification in that for site plans in this district, the Commission needs to act in the capacity of the ZCO in determining whether an application or proposed development meets the standards set forth in Section 121.

Section 80A.2(C) states no site plan approval shall be granted unless the Commission finds it meets the standards of Sections 121 and 130A4-130A10.

Section 80B – additional Special Standards were added.

Section 80B.1 – the word “unreasonable” was deleted. Mel Seifert noted this was so overbroad in scope. Just driving to work bears a small amount of risk. Many of the businesses there already have some kind of risk. That was why the Commission put in the word “unreasonable.” He was concerned with deleting the word “unreasonable.” Its up to the Commission to decide reasonable or unreasonable. A lengthy discussion followed with regard to removing the word “unreasonable.” Bill Sangster noted the word unreasonable is a good way to start an argument of whats reasonable or unreasonable. At what point does a risk become unreasonable. Henry Krempel noted the risk clause would go away. Attorney Cassella noted if “unreasonable” is in there, its up to the Commission to determine what is unreasonable.

Section 80B.1(C) – scrap materials or refuse. It was noted scrap materials have value although it may be overly broad. Refuse is trash. Bill Sangster noted their intent is they don't want a scrap yard or junk yard. A lengthy discussion followed with regard to scrap materials, refuse and recycling of bottles and materials. Mel Seifert pointed out there is nothing in there that limits these to principal uses or byproducts of principal uses. Attorney Cassella noted transfer type station uses would not be allowed. Sally Murray suggested eliminating scrap materials and just say refuse. Section 80B.1(B) would be by Special Exception and insure the public would be involved. There was discussion as to whether bringing in materials to make materials would be fine.

Mel Seifert noted this district in pretty restrictive. Bill Sangster noted that is why they bought their properties because the area is restrictive. Sally Murray noted she didn't see © as adding any value.

Attorney Royston suggesting more definition might help. He also asked whether or not doing this totally within the building as opposed to outdoor was a

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problem. Mel Seifert noted scrap materials aren't necessarily a bad thing. Attorney Royston noted the storage of scrap materials is too generic. Attorney Cassella noted they could specifically prohibit junk yards, etc. and just say storage of materials.

Elaine Fitzgibbons noted things like recycling is not light manufacturing or research. Chairman Lavy noted the Commission passed a regulation and the property owners didn't like it and took the Commission to Court. We are now working again to try and come to a settlement. Attorney Cassella noted the newly passed regulation was too discretionary and they wanted to tighten it up.

John Schiavone noted the 60,000 gallons of propane didn't meet this either, but it did. Mel Seifert noted anyone can seek a permit for anything.

Keith Scherber noted the Commission worked with the neighbors and that brought us to Court because the Commission didn't listen to them. Messrs. Lavy and Seifert disagreed. Henry Krempel noted everything he has heard is interactive and the Commission is working with the neighbors.

Mel Seifert asked what happened to the General Principal Use of Research and Testing Laboratory Facilities. Attorney Cassella noted it was moved to a Special Principal Use for more scrutiny and whether or not there is any negative impact on neighboring property owners.

Mel Seifert noted the Commission didn't see why someone couldn't just sell their business as is and keep going. Discussion ensued regarding similar uses. It was noted its just the high intensity uses that require additional scrutiny from the Commission.

Mel Seifert asked what the intent of 8-7d was. Attorney Royston noted that means a site plan is automatically approved within 65 days if its not acted upon.

Attorney Cassella noted this public hearing should probably be continued. Attorney Royston noted the intent here was to try to come up with a regulation which met the intent of the Commission and to streamline the procedures, but it would require a meeting. There maybe some merit to those issues.

Attorney Royston noted the disassembling, crushing and demolishing has been removed by the Commission.

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Attorney Royston noted he supported the distinction between General Principal Use and when a Site Plan is required, but if its required, there is a 65 day maximum.

Attorney Royston noted the appellant needs to come up with language which makes sure the uses they find objectionable are the same ones the Commission finds objectionable.

There was further discussion regarding pre-existing nonconforming uses and similar uses. Attorney Royston noted under the Old Saybrook regulations, there is process where something has been approved by Special Exception or Site Plan, there can be modification to it. The ZCO makes a determination whether the change is minor or not. The regulation can be rewritten. Its important the Commission makes that determination.

Attorney Royston further noted he thought the intent is that the similarity is not necessarily the character of the product but the effect of what one is doing under the Section 130 standards.

Bill Sangster noted they want things to be transparent and in a public format. Attorney Royston noted it is policy decision. Two separate things. We are talking about an existing business as opposed to the number of GPU's which do not require a Special Exception. You want to have a Special Exception because you want a public hearing to be able to express your concerns. Bill Sangster noted he would at least like to know what is going on to see if theres an impact to these businesses. Perhaps something could be put in there that the applicant has to notify abutting property owners of a pending application. Mel Seifert noted if notification is required, it should be the responsibility of the applicant. Attorney Royston noted a lot of towns now have notification to the neighbors within 100' by the applicant and requires Certificates of Mailing. This notification is not unusual.

Motion by Zanardi, second by Seifert, to continue the Public Hearing for Section 80 Amendments to allow the applicant to come back with additional language. Unanimously Approved.

The fifth public hearing was opened at 9:30 PM.

Amendments to Zoning Regulations

Delete Section 120L. TERMINATION OF SPECIAL EXCEPTION, and replace with

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new Section 120L. TERMINATION OF SPECIAL EXCEPTION.

Delete Section 140J. TERMINATION OF VARIANCE, and replace with new Section 140J. TERMINATION OF VARIANCE.

Seated for this hearing was Lavy, Seifert, Murray, Merola, Scherber, Krempel, Zanardi, Fitzgibbons.

Chairman Lavy noted this was a continued public hearing and read into the record a letter from the Connecticut River Gateway Commission dated February 24, 2017.

ZCO Brown noted 2 emails had been sent by Mr. Ruel which he wanted admitted into the record. The author of those emails (William Ruel) agreed they did not have to be read but passed around to Commission members and then entered into the record and file. One email was dated January 13, 2017 to Jon Lavy and the second was dated January 24, 2017 to Lauren Gister.

Commission Counsel Dave Royston noted revised Sections 120L and 140J were submitted to the Gateway Commission. Unfortunately due to a snowstorm it was not possible to submit these to the Commission ahead of time for review. The Gateway Commission was advised these were revised by staff and Commission attorney, but had not been presented to the Commission before the Gateway meeting.

Attorney Royston noted Gateway wanted to be sure that a 15 year old variance that had not been recorded was going to be revived. Attorney Royston explained the revised Sections and which ones if recorded by May 1, 2018 would be effective. Some comments from the Commission were also incorporated into the revised regulations. There could be an extension of time requested for starting construction or completion of work requested from the Zoning Board of Appeals.

Attorney Royston noted the revised sections provide an extended period of time for the holder of a special exception or variance until May 1, 2018 to get their zoning permit, then a period of time to get the building permit and 2 years to complete construction. The new time periods will allow the Ruels to request an extension of time from the Zoning Board of Appeals without going through the full application process.

Attorney Valerie Votto speaking on behalf of the Ruels noted they would like to

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know why they had such a problem. The granted variance had no limitations on it. In the future it would be helpful if time limits are shown on the variances. The Ruels bought something with a variance, no intention to build and wanted to sell it. There was some ambiguity as to whether or not that variance was still valid. From the moment they bought it, they had a piece of property without a valid variance.

Attorney Votto further noted this was the only remaining unimproved property to be effected with the 50' to 100' buffer. They appreciate what is being done with Gateway. They had no knowledge they had to operate within certain time frames or the variance had expired before they bought the property.

Attorney Royston noted Attorney Votto brought up a good point. He asked if that point would be satisfied if another sentence was added to the end of Section 140J.1 EFFECTIVE DATE which read, "The Notice shall reference the expiration provisions of Section 140J.2."

Attorney Votto noted there was a lot of confusion on the interpretation of information provided to the Ruels and how this regulation had been viewed in the past and how it is viewed now.

Mel Seifert asked if the Ruels were satisfied with these recent regulation changes. Attorney Votto replied no, they would like more time, maybe 10 years.

Bill Ruel noted he has done some research and there are only two towns, Chester and Killingworth, that have that clause. They still want to sell the property. They would like an effective date of this decision and get 10 years. Chairman Lavy noted that would have to go back to the Gateway Commission as a substantive change. The question was asked if the Ruels could go back to Gateway, request another variance and have the date start again. Attorney Royston noted Gateway would be a party to that and have the opportunity to appeal. They appealed once and lost and have now approved the 10 year look-back time period. Royston further noted the property owner has the option to go to the ZBA and ask for an extension. I don't think Gateway would be involved in an extension request to the ZBA. That would be a decision made by the ZBA attorney. Once the regulation is adopted, the Ruels can apply under the Barnick Variance for a zoning and building permit for that specific dwelling that was approved. They also have wetlands approval. Attorney Votto noted at this point they have until May, 2018 with the caveat of asking for an extension at that time. Angela Ruel asked what the time period is for an extension of time.

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Attorney Royston noted the ZBA would make that determination. Anything reasonable.

Attorney Royston noted there is a property owner unhappy with the regulation as written. Comments were made by Mr. Ruel with respect to not only is the existing regulation confusing, but everybody says its illegal and unforceable. Royston noted previously he would review any case where this has come up if provided to him. Nothing has been provided to him and that says to him it is argueable.

Chairman Lavy noted if the Commission held the public hearing open, the Ruels could go to ZBA or whoever and come back with additional information. Commission members agreed to keep the hearing open on Sections 120L and 140J.

Motion by Krempel, second by Joslow, to continue the public hearing for Sections 120L and 140J at 10:10 PM. Unanimously Approved.

Angela Ruel noted with saleability of the property, if another person contracted for the property, would that individual have to file for a new variance? Attorney Royston noted that question had been asked and responded to in a private conversation. He noted that question was not relevant to this public hearing discussion. He further noted he would be willing to discuss that with the attorney.

Respectfully submitted,

Sally Murray /jrb

Sally Murray, Secretary