

## **Draft Planning Commission Public Hearing on Proposed Zoning February 14, 2017**

Attendance:

Matt Tell, Staley McDermet, Patti Smith, Bennett Grout, Edie Mas for the Planning Commission; Malcolm Moore, Ashley Bies, Gary MacArthur, Thorin MacArthur, Adam Gebb, Anthony Bermer, Ryan Williams, Bob and Nancy Anderson, Jean Boardman, Carol Hendrickson, Carol Johnson.

Matt Tell welcomed all who came out for the hearing, turning to Staley to summarize Planning Commission (PC) actions since the last Hearing.

Staley McDermet went over the changes PC made as a result of the comments at the last Hearing, namely changes in following sections: Exemptions to Wildlife Overlay Districts; Section 345 (Conservation Commission) , Section 382; and some definitions. See current proposed zoning regulations on Town's website. He then asked for questions.

Malcolm Moore started by asking some questions about the Stream buffer setbacks. As a professional surveyor, he has had the opportunity to map many areas in town, and knows that many streams are not located as detailed on the map, so that the buffer zones are not accurate. Edie clarified that the PC relies on maps made by the Regional Planning Commission (WRC), who relies on State data. In the past, she had tried to change some of the streams but had been told that WRC could not change them unless they were changed by the State. Some said obviously if a landowner encountered this on his land he could point it out in applying for a permit, so the map could be ignored, but Malcomb pointed out that it still made it a burden on the landowner to come and say that something doesn't exist. He suggested that the PC might add something in the regulations that made this more explicit, that "reality trumps the map". There was a related question about who verifies where the streams are or are not, in such a situation? Zoning Administrator? Conservation Commission?

Gary MacArthur asked about whether intermittent streams were included in the buffers. Answer was yes, as per State guidelines. Tim Segar pointed out that forestry and agriculture are regulated by the State, so these uses are not governed by the Town's ByLaws.

Concerning the Wildlife Crossings, Anthony Bermer asked who determined the crossings, as he has observed that one indicated on the map has no sign this winter of any wildlife tracks. Adam Gebb from the Conservation Commission (CC) answered that although all roads in the entire town are basically wildlife crossings, some were considered more important by the CC as they mapped them over the past couple of years. The crossings were given to the PC by the CC, no State or local biologist was involved. He mentioned that there are more that were mapped – almost twice as many. When asked why these were not included, he said that this whole proposal was meant as an "ecological discussion" with landowners; many of the crossings are also around streams, but the riparian crossings are much more narrow than the wildlife crossing.

Carol Hendrickson asked how people are meant to absorb all of this – she has found it difficult to find where things are located in the proposed ByLaws as there is no index, even though she is somewhat familiar with the topics as she served on the Planning Commission. She felt that the proposed regulations needed to have ways to help people find their way on simple things, e.g fences, or signs. Maybe the definitions of terms could refer to the section that applies. Malcomb agreed with Carol, that it was a very complicated document, hard to find what you were looking for. There were also places that a lot of room for interpretation.

Anthony raised a concern that a lot more projects will come before the DRB, demanding more volunteer work hours. And he asked what the Town's liability was, when people don't like the decision

made by the DRB. PC members went over the procedures, the right to appeal to the State in such a case. He asked whether people could be individually sued, as he has seen in Connecticut? Edie answered that, per her knowledge, there is a State law in VT that protects volunteers who serve on Boards executing actions based on their best knowledge, from personal liability.

There were more questions and clarifications on the intent behind the Wildlife Crossings and Area, that they were meant as a guidance, not a requirement, and particularly not meant to curtail development. Gary pointed out that he had looked for and not found any statement to that effect in the proposed ByLaws. Ashley pointed out that a sentence was included in Section 341, but not 351, and should be there also. Gary also pointed out a concern that the various reviews and needed meetings etc. could make a project cost a lot more, and might discourage potential buyers on a piece of property. Mary Sargent (Zoning Administrator) said that she had witnessed that this had happened. His concern is that this was favoring more affluent buyers and landowners. Tim added that, personally, he did feel there was an issue of affordability of doing all of this, that might make it harder for people with more limited means coming to Marlboro.

Jean Boardman wanted to know what was the law behind the DRB when it recommends something, and how is it enforceable? It was pointed out that the DRB is empowered by these ByLaws to make the law, by interpreting what the ByLaws say in specific cases, putting their decisions into conditions to the landowner, who can then appeal them if desired. Mary talked about the enforcement issue, which in her experience is always a problem; final step is to flag the deed so on resale it is brought up again.

Anthony asked a question concerning the tax property implications, seeing as the Town will be imposing new restrictions if the new ByLaws are approved, a “taking” of previous rights held by the landowner, reflecting a different set of values. The proposed changes also do not affect everyone equally, so perhaps should be reflected in how taxes are set, as they will affect the value of property negatively. Staley clarified that right now Marlboro assesses property based on its use right now, and that the worth can be subjective, based on a set of values that might differ- some buyer might value the land more because there were wildlife protective ByLaws in place.

The discussion returned to the implication of the DRB reviewing and acting on specific cases, and assurances from the PC that this would not adversely affect what the landowner wanted to do, that the DRB would rule in favor of the land owner. A number of people present expressed the opinion that the ByLaws gave no assurance that the DRB would always rule this way, that it showed a level of confidence in the future members of the DRB that would respect this intent. Gary suggested the PC might write into the ByLaws some mandated position for the landowner – like an advocate or liaison – that could help the landowner get through the hurdles of the process. His concern was for those who might not be able to afford to hire someone who could do this. There was some discussion about whether this could be assigned to some member of the CC.

Gary next raised an issue with the wording in Section 343, that the exemptions only applied to existing homes, not homes that might in the future might be approved, He suggested the term “prior to the date of regulations” be removed, because, as Anthony pointed out, it might create two classes of houses etc that would make it even more complex.

Matt thanked everyone for coming out, and for their suggestions.  
Hearing adjourned 7:15.

Respectfully Submitted, Edie Mas, Secretary