

Town of Sterling
Planning and Zoning Commission
Notice of Public Hearing

The Sterling Planning and Zoning (P&Z) Commission has scheduled a Public Hearing on Tuesday March 24, 2015 at 6:45 PM in the Sterling Town Hall, Room #15, 1183 Plainfield Pike, Oneco, Connecticut on the following item:

An application by the Town of Sterling, Board of Selectmen, to amend the Town of Sterling's Zoning Regulations regarding Excavation (administration, definition, permitting, and standards) Regulations.

The purpose of the Public Hearing is to allow all interested persons to speak and to receive written communications regarding the application by the Board of Selectman to the Planning and Zoning Commission to add excavation to the Zoning Regulations.

A Copy of the proposed Zoning Regulations is on file in the office of the Sterling Town Clerk during normal business hours.

Dated this 9th day of March 2015 at the Sterling Town Hall, 1183 Plainfield Pike, Oneco, CT.

Dana Morrow, Chairman.
Sterling Planning and Zoning Commission

March 24, 2015

The public hearing was called to order at 6:50 p.m. by Chairman Dana Morrow.

Other members present-Ross Farrugia, Chris Turner, Cindy Donall, Frank Bood, Alternate Caren Bailey, and Alternate Walter Moriarty.

Staff present- Atty. Michael Zizka, Russell Gray, John Firlik, Don Aubrey, Jamie Rabbitt, Demian Sorrentino, and Joyce Gustavson.

Also present-Andrea Truppa, Wayne & Therese Segrave, Jim Hawkins, Ulric Deojay, Neil & Marlene Cook, Bruce Woodis (7:00 p.m.), and Bob Messier (7:14 p.m.).

The purpose of the public hearing is to accept written and verbal comments on the application by the Board of Selectmen to add excavation to the Zoning Regulations.

There is no correspondence to be read into the minutes.

D. Morrow stated that all public comments will be held to three (3) minutes and if you run more than three (3) minutes you will have a turn to speak again. D. Morrow asked Don Aubrey, Sterling Town Engineer, to present the application on behalf of the Board of Selectmen.

D. Aubrey stated that two years ago he approved various applications with the Town that raised questions about some of the standards in the Ordinance. The changes have been suggested to continue to treat excavation as a "use as a matter of right".

The changes reflect the current attitude in Town towards what applicants should be made to do and what they were allowed to harvest and how they would be allowed to do the work. By moving the Excavation Ordinance to the Planning and Zoning Regulations and treating it as a "use as a matter of right", the need for special permits and public hearings is eliminated. If Planning and Zoning fails to make a decision in the sixty-five (65) days, the plan would be automatically approved.

The new regulations propose changes to allow for steeper slopes, engineered slopes and soil retaining structures as long as the Selectmen determine that they may be safely used; a site will also require four (4) inches of topsoil plus eight (8) inches of subsoil; the excavation permit will run with the property and not the owner; the Zoning Enforcement Officer can approve minor changes to buildings, parking, or landscaping; excavation can occur within 200 feet of a structure if adequate, alternative safety and environmental measures are proposed or a waiver from the owner of the structure has been provided; and excavation would appear to be a "use of right".

One typo was noted and needs to be corrected in the proposed excavation regulations:

Appendix A – Section 107.1 B – The word "Special" Permit appears in two (2) places and should read Excavation Permit.

D. Morrow stated that before the Commission takes public comment Atty. Mike Zizka is available to explain and clarify the legal jargon to the board and the public.

M. Zizka explained that these changes have been the subject of discussion through the Board of Selectmen's Office for many years. Efforts have been made to update the existing ordinance to try to incorporate into that ordinance the practices that the Town had been using under the old ordinance but not reflected in the language of the ordinance. The whole point of this was to update the ordinance and to make the regulations more streamlined and more reflective of the way Sterling actually operates.

M. Zizka stated that there is a strange provision in State law, Section 7-148 which talks about all of the powers that a town has that it can exercise through an ordinance. One of the powers has a strange limitation which states the town has the power to regulate the filling of, or removal of, soil, loam, sand or gravel from land not in public use, etc. except when a Zoning Commission exists. The town has had this ordinance for a long time, before the Planning Commission became the Planning and Zoning Commission and it has been operating under that ordinance successfully and the goal of the Selectmen and the Town Engineering Office is to allow that process to continue to work the same way as it has. The concern was that when zoning was added to the Planning Commission's responsibilities, the provision came into play and raised the question as to whether or not the Selectman could continue to exercise their powers under and Ordinance. This application presents to the Zoning Commission a set of regulations, but under that set of regulations, hands the power back to the Board of Selectmen to operate the same way that the Selectmen operated before. The one major difference under State law is the site plan review. State law gives the Planning and Zoning Commission a very short time to act, sixty-five (65) days. Previously the Selectmen had sixty-five (65) days to begin a public hearing; ninety (90) days to complete the public hearing and another sixty five (65) days to make a decision. The concern with that was trying to incorporate a public hearing with all the notices associated with that. State law does not allow you to extend the time table if there is a public hearing. If the Selectmen think there may be a major issue and that the public would want to comment on a particular excavation then a public hearing could be called. The excavation application will go through the zoning regulations, according to State law, but the decision making power is in the hands of the Board of Selectmen, where it is today, under the existing ordinance.

D. Morrow asked if anyone had any questions or comments. There were none.

D. Morrow asked if anyone had any questions or comments. There were none.

D. Morrow stated that if there are no questions or comments then the public hearing will close at 7:16 p.m.

March 24, 2015

Call to Order: The monthly meeting of the Sterling Planning and Zoning Commission was called to order at 7:25 p.m.

Roll was called: Dana Morrow-present, Frank Bood-present, Ross Farrugia-present, Chris Turner-present, Cindy Donall-present, Alternate Walater Moriarty-present, Alternate Caren Bailey-present, and Alternate Paul Ezzell-absent, and First Selectman, Russell Gray-present.

Staff present- Mike Zizka, Jamie Rabbitt, Demian Sorrentino, and Joyce Gustavson.

Also present- John Firlik, Andrea Truppa, Wayne & Therese Segrave, Bruce Woodis, Bob Messier, Charlie Corson, III, and Shawn Bourgeois (8:00 p.m.).

Audience of Citizens: No comment.

Approval of Minutes: C. Donall made a motion, seconded by C. Turner to approve the meeting minutes of 2/24/2015 as written and presented. All voted in favor of the motion.

Correspondence: J. Rabbitt received notification from Murtha Cullina, LLP regarding the Commission's case with Sterling Trails for the 8-30g application. There was a decision by the Superior Court that Atty. Zizka would like to discuss with regards to time frames associated with any appeal that can be taken. J. Rabbitt is making a recommendation to the Commission to add that to Item V.

Unfinished Business and place that before the discussion on the excavation regulations.

C. Turner made a motion, seconded by F. Bood to move Unfinished Business Va. to Vd. and insert Va. executive session to discuss pending litigation regarding Sterling Trails. All voted in favor of the motion.

Unfinished Business:

a. Executive Session to Discuss Pending Litigation for Sterling Trails, LLC Sterling Road (Route 14): C. Turner made a motion, seconded by F. Bood to enter into executive session to discuss pending litigation for Sterling Trails, LLC. All voted in favor of the motion.

Entered executive session at 7:29 p.m. and left executive session at 7:45 p.m.

There were no votes taken during executive session.

b. Two-Lot Subdivision Application PZ-#2015-01 by Timberwolf Enterprises, LLC for 352 Main Street: D. Morrow commented that this application was submitted in January where no meeting was held. In February the application was submitted and staff reviewed the subdivision plans. Town Planner's findings and recommendations consisted of twenty-four (24) items, which is excessive. This is a waste of staff time to correct these prints and if the Commission receives prints in this category, at this level and expertise again, they will be rejected.

The following items were submitted into the record: Six (6) copies of the revised site plan; a letter dated 2/27/2015 from Don Aubrey of Towne Engineering, Inc., regarding the alternate driveway (copy on file); letters dated 3/12/2015 and 3/17/2015 from Robert Messier of Messier & Associates, Inc., addressing the twenty-four (24) recommendations from J. Rabbitt (copy on file) and a copy of the State Archaeologist's (University of Connecticut) letter regarding site development impact on resources; a letter dated 3/18/2015 from D. Aubrey of Towne Engineering, Inc. stating that he reviewed the revised site plans and that all of the technical and engineering related requirements have been fully met (copy on file); a letter dated 3/24/2015 from the Northeast District Department of Health (NEDDH) regarding approvals and test pit data (copy on file); and a letter dated 3/24/2018 from Jamie Rabbitt, Town Planner stating the Commission needs to address a number of potential waiver requests and a few minor items that can be addressed as modifications to an approved plan (copy on file).

B. Messier discussed the revised plans and the location of the driveway with the Commission.

J. Rabbitt went over his recommendations of the plans and explained the potential waiver requests. When a Commission approves a subdivision, they are acting administratively. The application before the Commission is suppose to meet the regulations; if you don't waive a particular section of the regulations, then your motion to approve is actually approving a plan that doesn't administratively meet them

C. Turner made a motion, seconded by F. Bood to grant a waiver from the Sterling Subdivision Regulations, Section 11 for the required sanitary report. All voted in favor of the motion.

C. Turner made a motion, seconded by F. Bood to grant a waiver from the Sterling Subdivision Regulations, Section 8 for the requirement of open space or fee in lieu thereof. All voted in favor of the motion.

C. Turner made a motion, seconded by F. Bood to grant a waiver from the Sterling Subdivision Regulations, Section 11 for the requirement of the sanitary report and well report. All voted in favor of the motion.

C. Turner made a motion, seconded by F. Bood to grant a waiver from the Sterling Subdivision Regulations, Section 6 for the requirement of an erosion and sedimentary plan. All voted in favor of the motion.

C. Turner made a motion, seconded by C. Donall to approve application PZ-#2015-01 by Timberwolf Enterprises, LLC (Map 03844/014/0029) for a two-lot subdivision for property located at 352 Main Street as referenced by plans entitled Record Subdivision Map – "Timberwolf Ridge", Parcel "A" prepared for: Timberwolf Enterprises, LLC, by Messier & Associates, Inc. consisting of two (2) sheets with the following revision dates: Sheet 1 with revision dates of 3/6/2015, 3/17/2015 and 3/24/2015; Sheet 2 with revision dates of 3/6/2015, 3/17/2015 and 3/23/2015, with the following six (6) modifications: 1) The applicant shall pay in full all costs associated with the review and processing of the application prior to the signing of mylars. 2) The applicant shall be required to pin/monument the lots prior to the signing of

mylars or provide surety for pins/monuments. The amount of surety shall be reviewed and approved by the Town Engineer. Any proposed surety shall be in the form of cash and/or irrevocable letter of credit. 3) Underground utilities trench detail in pavement needs to be added to the detail sheet. 4) A final as-built plan for sightline shall be submitted to the Sterling Planning and Zoning Commission for staff review and approval prior to the issuance of a building permit on either lot. The as-built plan shall also show verification that the driveway(s) have been installed per the Town's Public Improvement Standards, specifically their vertical profiles adjacent to the Town's roadway edge. The as-built plan shall include but not be limited to final topography, construction improvements and limits of disturbance. 5) The applicant shall submit final easement language including area descriptions for driveway and utilities to the Commission for review and approval prior to the signing of the mylars. 6) The existing garage shown on lot A-2, for which the applicant has proposed to remove, shall be removed and/or relocated (in an area compliant with regulations) prior to the signing of the mylars.

All voted in favor of the motion.

c. Three-Lot Subdivision Application PZ-#2015-02 by Patricia Desmarais for Margaret Henry Road:

D. Morrow commented that this application consisted of thirty (30) items that needed to be addressed. He realizes that B. Woodis took over for someone else, but feels that this was an incomplete application and better plans need to appear before the Commission on future applications. B. Woodis stated that this application came before the Board as a two-lot subdivision and during the course of process, became a three-lot subdivision and great strides were made putting together that third lot and incorporating another engineer's plan. B. Woodis also stated that when the Town Planner reviews the plans, he offers comments and not all the comments are negative; some comments indicate items that need to be addressed or provided. As a Commission member, D. Morrow expressed his concern at trying to protect the Town and stated that plans need to come before the Commission in a more efficient manner. The following items were submitted into the record: Six (6) copies of the revised site plan; Sterling Inland Wetland and Watercourses Commission meeting minutes dated 2/26/2015; letters dated 3/2/2015 and 3/20/2015 from Don Aubrey of Towne Engineering, Inc., regarding the driveway sightlines (copy on file) and comments addressing the revised plans to completely resolve the technical issues of the application (copy on file); correspondence from Demian Sorrentino, Zoning Enforcement Officer, dated 3/4/2015 clarifying his involvement with the property located at 0 Margaret Henry Road (copy on file); letters dated 3/20/2015 and 3/24/2015 from Bruce Woodis of KWP Associates regarding the Fee-in-Lieu of Open Space (copy on file); a request for waivers for an index plan and erosion and sediment control plan (copy on file); and a letter dated 3/24/2018 from Jamie Rabbitt, Town Planner stating the Commission needs to address a number of potential waiver requests and other items that can be addressed as modifications to an approved plan (copy on file).

B. Woodis discussed the revised plans regarding the soils, topography, and wetlands, as well as, additional information regarding P. Desmarais' house site that was performed by the other engineer to show the contours, the proposed grading, and the buildable area.

J. Rabbitt went over his recommendations of the plans and explained the potential waiver requests.

C. Turner made a motion, seconded by F. Bood to grant a waiver from the Sterling Subdivision Regulations, Section 11 for the required sanitary report. All voted in favor of the motion.

C. Turner made a motion, seconded by F. Bood to grant a waiver from the Sterling Subdivision Regulations, Section 5 for the requirement of an index map. All voted in favor of the motion.

C. Turner made a motion, seconded by F. Bood to grant a waiver from the Sterling Subdivision Regulations, Section 5 for the requirement of illustrating the proposed contours. All voted in favor of the motion.

C. Turner made a motion, seconded by C. Donall to approve application PZ-#2015-02 by Patricia Desmarais (Map 03276/011/0010) for a three-lot subdivision for property located at (600) Margaret Henry Road as referenced by plans entitled Subdivision Plan – prepared for: Patricia Desmarais, by KWP Associates, consisting of three (3) sheets with the following revision dates: Sheet 1 and 2 with revision dates of 2/18/2015, 2/26/2015, 3/19/2015 and 3/24/2015; Sheet 3 with revision dates of 2/6/2015, 2/18/2015, 3/19/2015, and 3/24/2015 with the following ten (10) modifications: 1) The applicant shall pay in full all costs associated with the review and processing of the application prior to the signing of mylars. 2) The applicant shall be required to pin/monument the lots prior to the signing of mylars or provide surety for pins/monuments. The amount of surety shall be reviewed and approved by the Town Engineer. Any proposed surety shall be in the form of cash and/or irrevocable letter of credit. 3) The applicant's appraised value of \$146,000 appears to be consistent with land values in this area in. The fee-in-lieu of open space shall be \$2,500 per lots 10B and 10C and \$7,500 for lot 10. Therefore the total open space fee would be \$12,500. This fee would be due upon the initial transfer of title to each lot. A copy of this stipulation shall be filed as a caveat on the Town of Sterling land records. 4) Underground utilities trench detail in pavement needs to be added to the detail sheet. 5) A final as-built plan for sightline shall be submitted to the Sterling Planning and Zoning Commission for staff review and approval prior to the issuance of a building permit on either lot. The as-built plan shall also show verification that the driveway(s) have been installed per the Town's Public Improvement Standards, specifically their vertical profiles adjacent to the town roadway edge. The as-built plan shall include but not be limited to final topography, construction improvements and limits of disturbance. 6) The wells for proposed lots 10B and 10C shall be drilled and tested for quality and quantity prior to the issuance of a building permit. A note shall be placed on each proposed lot stating the above. A caveat shall also be placed on the land records to that effect. 7) The applicant shall submit final easement language including area descriptions for proposed

sightline easements to the Commission for review and approval prior to the signing of the mylars. 8) The applicant shall submit final deeds (in a recordable form) for proposed highway dedications to the Commission for review and approval prior to the signing of the mylars. 9) The applicant shall add anti-tracking pads to the plans, for lots 10, 10B and 10C per DEEP (Department of Energy and Environmental Protection) Bulletin 19. 10) The applicant shall get a letter from State Archeologist regarding site development impact on resources.

All voted in favor of the motion.

d. Consider & Act on Application #2015-01 ZTA by the Board of Selectmen to Amend Zoning Regulations Regarding Excavation Regulations: The public hearing closed earlier tonight.

C. Turner made a motion, seconded by C. Donall to approve the amendment to Application #2015-01 ZTA (Zoning Text Amendment) by the Board of Selectmen to amend Zoning Regulations regarding the Excavation Regulations. All voted in favor of the motion.

C. Turner made a motion, seconded by R. Farrugia to modify the prior motion to approve Application #2015-01 ZTA (Zoning Text Amendment) by the Board of Selectmen to amend Zoning Regulations regarding the Excavation Regulations to address two (2) typos: Appendix A - Section 107 Endorsement and Filing – Subsection 107.1 B., the word Special Permit appears twice and needs to be changed to Excavation Permit and Appendix A - Section 104 General Procedures and Documentation, “Site Plan in accordance with Section 111” should read “Site Plan in accordance with Section 112”, with an effective date of April 4, 2015. All voted in favor of the motion.

F. Bood made a motion, seconded by C. Turner to add under New Business, Item a. Discussion of Zoning Procedures and/or Enforcement within the Town. All voted in favor of the motion.

New Business:

a. Zoning Procedures and/or Enforcement within the Town: F. Bood reported that a resident in Sterling is living in a basement that is not a structure, has not received a Certificate of Occupancy, does not have a “Permit of Use”, and one egress from the property; the property does have an approved septic system. The Town has been made aware of this, but no action has been taken. There are many violations from a building and zoning perspective, and safety violations are in question in regards to the local fire department. The question becomes is this an enforcement issue, a building official issue, a staff issue, a State government issue, or a local government issue. Discussion was held on the proper way to move forward. F. Bood made a motion, seconded by C. Donall on behalf of the Planning and Zoning Commission to send a letter to the Town Building Official to take immediate action on the issues regarding the property located at 301 Church Street, Sterling, CT by issuing a Cease and Desist to the property owner and a letter to the Board of Selectmen asking the Fire Marshal to look at the property. All voted in favor of the motion. In addition to the motion, D. Sorrentino, Zoning Enforcement Officer will send out a zoning violation letter.

Audience of Comments: No comment.

Any Other Business:

a. Commission Training: F. Bood made a motion, seconded by C. Turner to table the workshop to the next meeting. All voted in favor of the motion.

Adjournment: C. Donall made a motion, seconded by D. Morrow to adjourn at 9:53 p.m. All voted in favor of the motion.

Attest: _____
Joyce A. Gustavson, Recording Secretary

Attest: _____
Christopher Turner, Secretary