



Town of Westport
Planning & Zoning Commission
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MEMORANDUM

TO: Planning & Zoning Commission
FROM: Mary Young, Deputy Planning and Zoning Director
DATE: February 17, 2011
SUBJECT: Questions Regarding Amendment #625

The items below document questions raised by members of the Planning and Zoning Commission to staff with the request that supplemental information be provided by staff and/or the applicant as applicable:

1. *May preferences be given to Westport seniors to locate in a Senior Residential Community on Town owned land? What is the impact of the 1/28/11 memorandum from the Town Attorney's Office that recommended changes to §19A-16, Affordability Plan? The amendment is intended to facilitate future development of a Senior Residential Community to serve Westport seniors according to the Explanatory Statement. Will it still do that?*

Yes.

A priority system may be created that will benefit Westport residents and remain in accordance with the Fair Housing Act. Such a system will be developed when the application selection process is developed for a future Senior Residential Community. The Planning and Zoning Commission may make a finding in any resolution of approval that recommends such a system be developed, but it is unnecessary and inappropriate to add this language into a Zoning Regulation. A supplemental memorandum from the Town Attorney's Office is expected that clarifies their 1/28/11 memorandum.

2. *Why did the applicant replace §32-15, **Managed Residential Community**, instead of adding a new provision, such as §32-15A, **Senior Residential Community**?*

At the time it appeared to make sense to utilize and modify the existing regulations to suit the needs of the community in 2011, as the existing regulations were never used by others since their adoption in the 1990's. That being said, the applicant advised staff they do not object to the Planning and Zoning Commission adopting the regulation as modified to maintain the existing regulation as is, and to modify the proposal to add an "A" after each section. Such a choice in formatting is consistent with the approach used in other sections of the Zoning Regulations including:

- §11-2.4.12A, *Accessory Apartments* and §11-2.4.12B, *Affordable Accessory Apartments*;
- §19, *Affordable Housing Zone* and §19A, *Residential Affordable Housing Zone/Workforce*;
- §24, *General Business District* and §24A, *General Business District Saugatuck*;
- §29, *Business Center District* and §29A, *Business Center District/Historic*; and
- §32-13, *Group Home for Youth* and §32A-13, *Residential Facility for School Based Education Program*.

3. *Why should any "special" provisions be applied to a Senior Residential Community with respect to §32-8, Excavation and Filling of Land? Is the amendment consistent with the excavation and fill amendment (Amendment #626), currently proposed by the Planning and Zoning Commission?*

Exemptions to the limit on height and amount of fill are proposed for a Senior Residential Community. The intent is to provide flexibility to the Town to develop that which is deemed desirable by the community pursuant to the Positive §8-24 Report, without the additional regulatory burdens that may be incurred by seeking variances from the Zoning Board of Appeals.

A site development plan is not yet available. It is unknown whether the proposed exemptions are necessary. The amendment is intended to provide as much flexibility as possible to address that which remains unforeseen at this time. If and when a site development plan is presented to the Commission, if it is deemed unacceptable, the Commission will have the authority to deny it. The applicant will be the Town, in partnership with private developer; so litigation appealing such a denial is not anticipated. The Town will be able to retain control of its' own destiny. The Town will not be "forced" to accept an undesirable project.

Amendment #626 was submitted after Amendment #625. It is anticipated that if the provisions in Amendment #625 are adopted as submitted or as modified, then Amendment #626 will be modified accordingly, before any public hearing is scheduled. The Planning Director was asked to obtain additional information on Amendment #626 before scheduling a public hearing and he may further revise Amendment #626 upon completion of his research.

4. *Does the amendment allow an Independent Living Facility to be developed by itself? Or must it be accompanied by a healthcare facility (Assisted Living and/or Full Care Facility)?*

Clarity is needed. Specifically, the definition in §5-2, Senior Residential Community, identifies it shall consist of residential units and may consist of other uses includes Assisted and Full Care Living Facilities, but the list in §32-15.2, Permitted Uses appears to suggest that all uses must be provided. What is required?

Yes.

An Independent Living Facility minus a healthcare component may be developed. The applicant intends to allow, not require, healthcare facilities. To clarify this intent the applicant proposes to add the words, "and may include" to §32-15.2, *Permitted Uses*, as shown below:

Construction and operation of a [Managed] Senior Residential Community, including the provision of [Private Residential] Dwelling Units, and may include Independent Living Facilities, Assisted Living Facilities, Full Care Living Facilities, and Senior Center, all as defined herein and in §5.2.

5. Is it permissible to limit the use, Senior Residential Community, to Town-owned properties, as proposed in §32-15.4, Location?

Yes.

The Zoning Regulations already allow certain uses only on Town-owned properties. As recently as 2009, the Planning and Zoning Commission adopted §32-19, *Lighted Athletic Fields on Town Owned Public School Property*. The question of limiting the use was raised then with the Town Attorney's Office who concluded the Commission was authorized to adopt such a regulation.

Additionally the P&Z staff comments dated 2/10/11 identify other similar sections already exist in the Zoning Regulations that also limit a proposed multi-family use to Town-owned property, and in some cases Town-owned or Westport Housing Authority-owned property, including:

- §20, Municipal Housing Zone;
- §32-2, Elderly Housing Municipal;
- §32-14, Conversion of School Buildings to Housing; and
- §32-17, Affordable and Middle Income Housing on Town-Owned Property.

6. Are there other Town-owned properties that are eligible for a Senior Residential Community based upon the eligibility criteria in §32-15.4, Location and §32-15.5, Lot Area, Shape and Frontage? The applicant and/or staff should confirm whether the following properties are eligible, and if not why not.

- A. The park located at 427 Riverside Avenue;
- B. Winslow Park located at 359 Post Road East; and
- C. The 11+ acre property located at 0 Woodside Lane next to Earthplace, (Parcel ID #B10029000).

The three (3) properties listed are not eligible. The criteria include:

- Shall be Town-owned property;
- Shall have a minimum lot area of 4-acres in the Res AAA, AA, A, and PRD zoning districts, and a minimum lot area of 2-acres in the BCD, GBD, HDD, HSD, RBD, RORD, and RPOD zoning districts; and
- Shall have 200' lot frontage on an Arterial Street as listed in the Road Classifications Table on Pg. 8-2 of the 2007 Town Plan of Conservation and Development:

Four Lane Arterials	Post Road (Route I)	Sherwood Island Connector
Arterials	Route 33	Kings Highway North
	Route 57	Long Lots Road
	Route 136	Lyons Plains Road
	Avery Place	Main Street
	Compo Road (N and S)	Myrtle Avenue
	Cross Highway	North Avenue
	Ferry Lane (not E or W)	Riverside Avenue
	Green's Farm Road	Roseville Road
	Hillspoint Road	Saugatuck Avenue
	Jesup Road	Turkey Hill Rd (N and S)

- A. The park located at **427 Riverside Avenue** is 2.6 Acres located in the Res A zone according to the Town's GIS. It does not meet the 4-acre criteria.
- B. Winslow Park located at **359 Post Road East** is located in the DOSRD #1; this zoning district is not eligible for §32-15, Senior Residential Community.
- C. The 11+ acre property located at **0 Woodside Lane** next to Earthplace does not have frontage on an Arterial street, it has frontage on Stonybrook Road, Tanglewood Lane, and Woodside Lane.

7. **§32-15.6, Affordable Units,** *does not appear to require an Affordability Plan, and it does not appear to require comparability between the market-rate, and below-market-rate dwelling units. Will there be an Affordability Plan? Will the dwelling units be comparable? Will the applicant agree to insert the language comparable to that found in §32-12.15, recently adopted as part of Amendment #618, the Inclusionary Housing amendment?*

Yes.

The applicant advised staff they agree if the amendment is adopted the language from §32-12.15 that requires an Affordability Plan and that requires the same quality of construction, same number of bedrooms, etc. will be added to proposed §32-15.6. That was always the intent which can now be codified if the Planning and Zoning Commission adopts the amendment with this modification.

8. **§32-15.9, Height,** allows building height of forty-five feet (45'). This section also grants discretion to the Planning and Zoning Commission to allow additional height to accommodate "stepped" buildings and sloping sites, subject to Special Permit/Site Plan approval.

Will the proposal to allow increased building height for a Senior Residential Community be consistent with the Zoning Regulations? Specially, staff was asked to obtain the building height of the following buildings.

33 Riverside Avenue	66 feet
274 Riverside Avenue	55 feet
8 Wright Street	67 feet
10 Wright Street	51 feet

In addition, P&Z staff found information on two other "well known" taller buildings in Town including:

20 Jesup Road (aka the Library)	45 feet
2 Post Road West (aka the Inn at National Hall)	52 feet

The source data is from the Zoning Permit files for each of the respective properties.

9. Why use gross lot area instead of net lot area in §32-15.11, Coverage, this approach appears inconsistent with the Zoning Regulations?

The intent for proposing the variation is to accommodate a desirable use on Town-owned properties many of which are known to have site constraints for development including areas of steep slopes and wetlands.

The staff comments and recommendations dated 2/10/11 recognize the proposed method for calculating coverage using gross lot area varies from the method prescribed in the Lot Area definition (§5) that requires deductions for a percentage of land containing steep slopes and wetlands, BUT, there is a rationale for the variation: to serve a public purpose to provide for affordable senior housing.

Using gross lot area is consistent with how building size is measured in the Zoning Regulations. The Floor Area Ratio (FAR) definition requires building size based on gross lot area, not base lot area; so the proposal may be considered consistent with how the Zoning Regulations measure a site's potential for scale and massing of buildings.

Additionally, there are examples in the Zoning Regulations where the Commission has modified standards when another purpose is being achieved. In the case of this regulation the benefits gained are requirements for affordable senior housing. Other examples include:

- §6-6.1.1 a - Which allows for increases in floor area in a Residence A zone for a split lot project where the overall non-conforming floor area and coverage for the total site is reduced.
- §19A-6 and §19A-6 in the R-AHZ/W zone where certain increases in building height are allowed when coverage is reduced.
- §20-3 in the MHZ Zone where public and private road rights-of-way may be included in lot area, in a zone that requires 100% affordable housing units.
- §24A-4 in the GBD/S Zone where relief on setbacks may be granted, and FAR and density was increased, in exchange for 20% affordable housing units.
- §29A-4, §29A-5, §29A-6 and §29A-8 in the BCD/H Zone where certain relief is given for setbacks, height, coverage and floor area when historic structures are preserved.
- §32-18.5 (a) in the Residential Historic Structures regulations where the Commission may grant relief from area or dimensional requirements, parking or landscaping when historic structures are preserved.

The P&Z staff comments identify the Planning and Zoning Commission may adopt the text as submitted or adopt the text with modifications.

If the Commission decides to adopt the text as submitted, staff recommended including a finding explaining the proposed manner for calculating coverage is deemed appropriate in cases involving a Senior Residential Community on Town-owned property containing steep slopes and/or wetlands, and is consistent with the method for calculating allowable floor area.

Alternatively, the Commission may modify the text to change the wording. Recommendations for any changes should be discussed with the applicant while the public hearing is open.

10. Why does the amendment propose eliminating language requiring grading and landscaping in §32-15.13, Open Space? This seems inconsistent with the future users' needs. Would the applicant agree to leave the language as is?

Generally yes.

The applicant advised staff they are agreeable to the Planning and Zoning Commission adopting this section with further modifications. Alternate language will be offered by the applicant at the 2/17/11 public hearing for consideration by the Commission.

11. What is the purpose of §32-15.19, Subdivision? Why is this proposed?

The purpose of the regulation is to provide flexibility to the Town in the future. Specifically if a Town owned property is developed for a Senior Residential Community, funding sources may require an independent living facility to be located on a separate lot from an Assisted Living or a Full-Care Facility. This provision would allow the separate legal lots to remain considered as one for zoning purposes post subdivision, consistent with the provisions in §44-7.2, which allows a 2-lot split of property that is considered one lot for zoning compliance purposes.

The Planning and Zoning Commission approved using the provisions of §44-7.2 at four (4) sites, including:

- A. 260 Riverside Avenue; Res. #85-164;
- B. 228 Saugatuck Avenue; Res. #85-113;
- C. 299 Riverside Avenue; Res. #86-87; and
- D. 100 Post Rd West (now known as 19 Ludlow Rd aka 130 Post Rd West); Res. #87-4