

WEST WINDSOR PLANNING COMMISSION

Draft Minutes
November 29, 2010

Present: Hal Pyke, Elvin Kaplan, Barbara Truex, Al Keiller, Mark Isenberg, Tom Kennedy, Jennifer Bodnar, Lucy Bodnar, Martha Harrison

1. Call to Order – Chair Hal Pyke called the meeting to order at 6:32 PM.
2. Changes or Additions – Jennifer Bodnar was present to discuss concerns about her driveway at 994 Route 44. Jen said the Bodnars had the driveway redone about six months ago. According to Jen, the width of the driveway extends onto the neighbor's property by approximately 3 feet and the neighbor put several boulders on the property line. Jen said she has talked to the neighbor's sons but is unable to resolve the conflict. In her opinion, Jen said, the neighbors are not adhering to Sections 4.7 and 3.2-1 of the zoning regulations. Jen said she is looking to the Planning Commission (PC) for help in clarifying the zoning regulations. Jen read part of Section 4.7 and agreed that the boulders do not need a permit but, in her opinion, they do need to meet the same criteria as fences in terms of the 3' setback. Regarding Section 3.2-1, Jen said driveways within 10' of a property line would be part of a shared driveway. Jen said both her driveway and her neighbor's driveway are within 10' of the property line, so there's a shared driveway access when you pull in. Jen said the paved portion belongs to her neighbors and the portion to the left of that is the Bodnar's. Al asked for more information about the physical delineation and the problem. Al asked if the rocks are on the Bodnar's property. Jen said no; the rocks are on the property line but she has to pull over onto the grass to get into the driveway. Jen said when she and her husband had the driveway redone, they didn't move it or anything, so they weren't concerned. Barbara asked about the curb cut. Jen said it's a double wide curb cut that extends out in front of both properties. Jen said they would have to extend the curb cut in order to be able to pull in without driving on the lawn. Jen said she is concerned about the snow plow hitting the stones because they are only about 2' tall; if they were 6' tall, the plow would have no problem and she would just move the driveway. Al asked if the stones were placed to protect the septic system. Jen said no; they were put there to protect the property line. Jen said before they had the driveway redone, they talked to one of Mrs. Davis's sons about it and he said, "Go ahead." Mark asked Jen what she is hoping to accomplish. Jen said she would like the rocks set back three feet. Jen said she talked to Mrs. Davis early on about removing 4 of the boulders and she was fine with that but wanted to clear it with her sons. Jen said a car parked on the Davis's property would not block the Bodnar's driveway. Al asked Jen if removing the stones would enable her to get into her driveway without driving on her neighbors property or her grass. Jen said 3' of the driveway is on her neighbor's property so the tires of the Bodnar's car would be on the neighbor's property but that shouldn't matter if it's a "shared driveway." Mark said he thinks "shared driveway" implies mutual assent rather than the Bodnars having the right to drive on their neighbor's property. Jen agreed. Mark asked how far down the driveway extends on the neighbor's property. Jen said 2' or 3'; it's on a diagonal. Martha showed the PC a map of the Bodnar property. Hal said Section 4.7 (A) says that fences 6' in height or less have to be set back 3' from the property line. Hal said the only other option he sees is widening the shared curb cut. Jen said they would have done that if the neighbor's son had pointed out the property line when they told him about their plans to

re-do the driveway. Martha said she thinks stone walls and fences are different and the 3' setback applies to fences. Barbara said the fact that stonewalls don't require a permit doesn't mean that they're not fences. Jen said they all fall under the "Fence" category; there's no "Stonewall/Hedgerow" section. Mark said he doesn't see it that way. Barbara said she doesn't agree with Mark; all it says is that you don't need a permit for a stonewall. Jen said if stonewalls don't fall under "fences," then they should have their own section. Jen asked about the purpose of setting fences back 3'. Jen said she would imagine that it's for maintenance and you still need room for maintenance with stone walls or boulders. Elvin said the PC should address this in their rewrite of the zoning regulations. Al said Section 4.7 should state that stonewalls are not considered fences for the purposes of this section. Al and Elvin agreed that the language of Section 4.7 could be interpreted either way. Hal asked Martha about the issues involved in expanding the shared curb cut. Martha said it's a state highway so the state would have to approve the work on the sidewalk. Martha said a boundary line adjustment might be another option if the neighbors are willing. Jen said she mentioned that option to the neighbors but got no response. Tom Kennedy said the boulders have been placed there to be an obstruction and are "a fence" for all intents and purposes. Tom suggested that the Bodnars write to the Zoning Administrator objecting to the situation and asking her to make a decision; then, if they disagree with the ZA, they can appeal to the Development Review Board. Jen asked if she could get some relief under Section 3.2-1 on shared driveways. Martha said the two driveways involved were pre-existing driveways and are grandfathered; Section 3.2-1 does not apply. Al said even if the ZA or the DRB determines that the boulders are "a fence" and the neighbors have to move them back three feet, the Bodnars would still have to get the neighbors permission to drive on their property. Martha said in the long run, the Bodnars are going to want to adjust the boundary line. Barbara asked about adverse possession. Tom said that's one option, but he thinks it would be easier to get a decision from the ZA and appeal it if necessary. Jen said she will send Mrs. Davis's sons another email and let them know that the ZA recommends a property line adjustment and see what they say. Tom suggested that Jen indicate that she is willing to pay for the survey.

3. Pre-hazard mitigation: Tom Kennedy – Tom said every 5 years, the regional planning commission (RPC) needs to update the All Hazard Mitigation Plan, which enables the town to receive federal funds in a disaster situation. Tom said the plan doesn't change much over time. Tom said John Broker-Campbell went over the plan with Jim Kenyon and Ralph Johnson. Tom said FEMA wants the RPC to run the draft by the PC. After the PC has reviewed the draft, FEMA Region #1 will review it and return it with comments, which the RPC will share with the PC before going to the Selectboard for approval. Mark asked if the draft reflects John's discussions with Ralph. Tom said yes. Mark asked what percentage of drafts are returned with comments by FEMA. Tom said they all are. Barbara asked if West Windsor is pre-empted from receiving funds if the town has a disaster that's not included in the pre-hazard mitigation plan. Tom said no. Hal asked what the project priority rankings mean. Tom said he doesn't know but he will find out. Tom said flooding, winter storms, structural fires and power failures are the top 4 threats for the town. Elvin said he thinks forest fires are also a threat. Tom said the plan can be revised to include forest fires. Hal said if there is anything on forest fires in the Basic Emergency Operations Plan, it can be included in the hazard mitigation plan. Tom said the Basic EOP does not include information on forest fires. Tom said the regional planning commission is "gps-ing" and coding West Windsor's

culverts. According to Tom, there has been an increase in the number of rain events in Vermont and many culverts are inadequate. Tom said he will make the minor modifications discussed and then send another draft to the Planning Commission. Mark asked if the Basic EOP is out of date. Martha said it gets updated every year.

4. Municipal Planning Grant application – Martha said the grant is to update the 1986 town forest management plan. Elvin asked if there has been discussion on what activities are permitted. Martha said the Selectboard adopted interim policies a couple of months ago. Elvin asked if the Town Forest includes the abandoned sand quarry at the top of Coaching Lane. Martha said she thinks so. Elvin said the quarry is used for target shooting and he thought the policies prohibited target shooting. Al asked what the PC is supposed to do with regards to the grant application. Martha said one of the grant application requirements is that the PC recommends applying for the grant. Al noted that there is no dollar amount in the draft narrative that Martha sent to the PC. Martha said the town is requesting \$13,200 and would have to pay a little less than \$2,000 of that. Al asked if the budget is sufficient. Martha summarized the activities that would be covered by the grant and offered to share the work plan and budget with the PC. Martha said the RPC proposed \$8,000 for their portion of the work and the town added \$5,200 for a forester, based on an estimate from a forester who works with Bruno Associates. Al said it doesn't seem like enough money. Martha said the Fish & Wildlife Department will do their part at no charge. Al asked if the boundary survey is outside the scope of the grant application. Martha said yes. Al said it seems like a worthwhile project. Mark asked who pays if we exceed our budget. Martha said if the town spends more than budgeted, the town would have to pay the extra costs. **Elvin made a motion to approve going forward with the grant application for this project. Al seconded the motion, which passed unanimously.** Al asked how quickly the state will act on the application. Martha said we should have an answer by the end of the year.
5. Continue revising zoning regulations – Nonconformities: Hal asked if the PC has resolved all the issues having to do with nonconformities. Martha suggested using the entirety of Example #4 from the sample bylaws to replace Section 3.9 (B) and (C). **Barbara made a motion to that effect. Elvin seconded the motion, which passed unanimously.** Fences: Hal suggested including a definition for fence in the definitions section. Al said we should clarify whether fences include stonewalls, hedgerows, etc. or not. Hal said if stonewalls are considered fences, they would have to be set back 3'. Al said the three stones that the Davis family put down don't constitute a stone wall. Al asked if a Jersey barrier would be considered a fence. Barbara said the first two sentences of Section 4.7 have to do with whether or not a permit is required, but do not provide the definition of a fence. Al said a fence would typically be wood, plastic, masonry, metal or similar materials. Al asked if a stonewall is a fence. Elvin said the purpose of a barbed wire fence is to enclose animals and barbed wire fences came shortly after stone walls, which served the same purpose. Elvin said he thinks a stonewall is a fence. Al said the regulations could read, "for the purposes of this section, fences include stonewalls, hedgerows, etc...." Hal said a hedgerow planted outside a bedroom window for privacy purposes is essentially a fence. Martha asked if someone is going to need a permit to plant a lilac bush outside her window. Hal said the lilac bush would need to be at least 3' from the boundary line. Barbara said if you plant a tree on your property line, your neighbor can trim the branches that extend over the line. Elvin suggested adding the sentence "Stonewalls, hedgerows and other types of vegetative materials don't require a permit but must meet setback requirements." Hal suggested, "For purposes of this section,

natural or vegetative materials constitute a fence,” then all four of the criteria would apply. Martha said then if you plant a 6’ lilac bush, you have to go to the DRB for conditional use approval, which seems insane. Barbara asked why Section 4.7 says that fences may require a permit. Martha said that’s because fences that are less than four feet are exempt. Al asked if one large boulder, or a boundary marker, placed on the corner of the property would be considered a fence. Hal said no. Al said what if you increase the number of rocks to two or three? Al said in the situation discussed earlier this evening, one big boulder would present the same problem as several smaller boulders. Martha said the problem is that the Bodnars are driving on their neighbor’s property. Al, Mark and Hal agreed. Al said if the Davis family had put up a fence, Jen would have been within her rights to say that it has to be set back three feet, but she still would have wanted to drive her car over the corner of their property. Hal said she’s got to resolve that somehow. Al agreed. Barbara asked how that got through occupancy permitting. Martha said that lot has been there for 100 years or more. Mark asked how long the driveway has been in that exact location. Hal said he doesn’t think the Yates’ ever considered having to have another driveway. Martha said they did have to get conditional use approval to use the property as a business and parking was one of the issues. Martha added that it appears, from the map that the Yates submitted, that they were supposed to use the curb cut further to the west. Martha showed the PC the parking layout for the business use. Barbara asked if the Bodnars should have used that curb cut also. Hal said he doesn’t think the Yates ever asked the Selectboard for an access permit. Barbara said it would be better if the Davises had put up a 6’ fence; the stones are a hazard and if she had to go in and out of that driveway, she would wreck her car on them. Martha said in order to use their driveway, the Bodnars have to drive on their neighbor’s property, whether there are rocks there or not. Al said Jen Bodnar is assuming that it is a shared driveway. Mark disagreed. Mark said there’s no question that the boulders were put there as an obstacle, but the fact remains that the Bodnars are driving on someone else’s property. Al said even if the Davis family moves the rocks, they could still tell the Bodnars not to drive on their property. Barbara asked if the language should be changed so the setbacks clearly apply to all the materials. Hal said he thinks the PC should define fence and modify the first two sentences. Martha read the dictionary’s definition of fence, “A structure functioning as a boundary or barrier usually made of posts, boards, wire or rails.” Mark asked if a single post would be a fence. Hal said, in this case, if they put a post in the corner, it would constitute a barrier, but one post does not constitute a fence – it would have to be of some length. Al suggested the following wording, “Fences, constituting a boundary or barrier, constructed of wood, plastic, masonry, metal or similar materials...may require a permit. Stonewalls, hedgerows and other types of natural or vegetative materials, that also constitute a boundary or barrier, don’t require a permit but do constitute a fence.” Al said then you need to determine if one tree or rock is a fence. Al said he doesn’t think it could be considered a fence. Barbara said it could be considered a fence if it’s a barrier. Al agreed that a single post could be considered a barrier. Martha said if you define a fence as a boundary but you can’t put it on the boundary line, it’s kind of confusing. Elvin said he thinks you’d have to be looking for trouble to say that “boundary” and “boundary line” are confusing. Mark said, “So you can’t have anything on a boundary line?” Barbara suggested that it could be on the property line if the abutting property owner grants written permission and gives permission for the person erecting the fence to go on their property for routine maintenance. Mark asked if a single post would be considered a fence. Hal said it wouldn’t necessarily be a fence, but it would be a barrier.

Mark asked what it would be a barrier to. Hal said surveyors are supposed to indicate where the boundaries are by driving a post that sometimes sticks up 2'. Hal said survey posts are not fences, but they are barriers. Elvin said he doesn't think a single post is a barrier. Hal proposed the following definition for a fence: "A structure consisting of wood, metal, plastic, masonry, natural or vegetative material, and functioning as a barrier or boundary." Mark asked if five spaced rocks would be considered a fence. Barbara said it would be hard to drive over them, so they are a barrier. Al said we're not going to be able to anticipate every situation, but the words "barrier" and "boundary" should be included in the definition. Al said "stone" should be included in the list of fence materials. Al asked Hal about the second sentence in Section 4.7. Hal said the second sentence says that stonewalls do not require a permit, but that has nothing to do with their location. Martha asked if stonewalls would require a permit. Hal said he guesses that they would. Martha said there is an exemption in Section 1.7 for fences less than 4' high. Hal said if a vegetative fence is planted along a boundary line and it gets to be higher than 4', the neighbor can make him shear it off. Al said under Hal's definition, the Davis family would have to move the rocks back 3' because the rocks would constitute a barrier and because they're under 4' they don't require a permit but they have to be 3' back. Al said with Hal's definition, the Bodnars could force the Davis family to move the rocks 3' back but they still couldn't drive on the Davis property. Hal said the issue of driving on the neighbors property is going to exist no matter how we revise the zoning regulations. Al said what if they remove four of the five rocks and leave the biggest one right on the corner of the property, could Jen Bodnar still say that it's a fence because it's a barrier? Hal said it's a barrier to the Bodnars driving on their neighbors property; there's no way around that. Al asked how we would use Hal's definition to resolve the issue if there was only one big rock and someone appealed. Al said a single rock on someone's property is not a barrier and would not constitute a fence. Hal agreed and noted that many people have large rocks at the corners of their driveway. Barbara suggested specifically mentioning stones as one of the materials in the fence definition. Al agreed. Martha suggested referencing Section 1.7 in Section 4.7. The PC agreed. The PC also agreed that, until the Bodnars have permission to drive on their neighbor's property, there is no change to the zoning regulations that will solve their problem.

6. Minutes - October 12: **Barbara made a motion to approve the minutes of October 12, 2010. Al seconded the motion, which passed with Mark abstaining.**
7. Next meeting: Monday, December 13th at 6:30 PM
8. Adjourn – **Elvin made a motion to adjourn at 8:30 PM. Barbara seconded the motion, which passed unanimously.**

Respectfully submitted,

Martha Harrison