

APPROVED MINUTES
MAIDSTONE PLANNING COMMISSION MEETING
Wednesday, April 19, 2023, 6.00pm, immediately following the Zoning Board meeting
Held by Zoom Video Conference

Members present (via Zoom): Bruce Barker, Bob Champagne-Willis, Chris von Alt

Ex-Officio Members present (via Zoom): Selectboard Chair Scott Lovell; Selectboard Member Bruno McKenzie

Other members of Town Government present (via Zoom): Town Clerk Amy Pear; Zoning Administrator Mike Otis; Lister, Auditor, and Health Officer Sandra Gray; Administrative Assistant to the Zoning Board, Planning Commission, and Selectboard Mary von Alt

Also present: Jim and Sharon Bennett; Chris Carazzo; Ed Tully

At 6.04 pm, the meeting was called to order by Chris von Alt, Chairman.

APPROVE MINUTES:

Bob made a motion to accept the minutes for the 3/8/2023 Special Planning Commission Meeting; Bruce seconded the motion. All voted in favor.

DISCUSS NONCONFORMING LOTS, STRUCTURES, AND USES:

In the slide show on his shared screen, Chris displayed information copied from the State Statutes on Nonconformities, 24 V.S.A. § 4412 (7), which states, "All [Town] bylaws shall define how conformities will be addressed, including standards for nonconforming uses, nonconforming structures, and nonconforming lots." He included further information from the State Statutes detailing the aspects that Towns should address (see 24 V.S.A. § 4412 (7) (A)). As Bob said, it is up to the Towns to decide how to deal with each of these circumstances. The next slide included the definition of Nonconforming lots or parcels, which are the same in the State Statutes and in Maidstone Bylaws: "lots or parcels that do not conform to the present bylaws covering dimensional requirements, but were in conformance with all applicable laws, ordinances, and regulations prior to the enactment of the present bylaws, including a lot or parcel improperly authorized as a result of error by the Zoning Administrator." Chris pointed out that the dimensional requirements that pertain to lots and parcels are really the guiding numbers for subdivisions, and have less to do with actual structures or uses. He displayed a chart he had created comparing the acreage and frontage stipulated for subdivision by zoning district in each version of the Maidstone Zoning Bylaw, the 1974 Bylaw, the 1994 Bylaw, the 2002 Bylaw, and the currently in effect 2016 Bylaw. For the last 30 years, not much has changed in those areas.

A lengthy discussion ensued including the following:

- What makes a lot/structure/use nonconforming and how such lots/structures/uses continue to exist as nonconformities under Town Bylaw; how lots can be accepted, but continue to be nonconforming;
- The fact that nonconforming lots are subject to current Bylaws, despite having been purchased or originated previous to or under earlier bylaws; land development on these nonconforming lots must go through the permitting process;
- Can nonconforming lots/structures/uses become conforming;
- The issue of not increasing nonconformity of a lot/structure/use;
- A lack of knowledge and understanding about the Maidstone Zoning Bylaws that address nonconforming lots/structure/uses (see Article 4 Nonconformities);
- Possible land development of specific individual landlocked lots, seeking answers from the Planning Commission about how these individual issues would specifically be handled;
- The need for all land development to go through the permit application process;
- If the Bylaws would be revised regarding existing landlocked lots;
- The definition of land development including both subdivision and construction of buildings;
- The role of road frontage requirements and right-of-ways/easements that give landlocked lots access to Town roads;

- Chris read §303 Required Frontage/Access to Public Roads in the Bylaw: “No land development may be permitted on lots that do not have adequate means of access, either frontage on a maintained public road or access by means of a permanent easement or right of way to such a public road. Access easements or rights of way shall not be less than 50 feet in width. Access to non-frontage lots shall be submitted to the Planning Commission for Site Plan Review;”
- The need for such right-of-ways to be submitted for Site Review to the Planning Commission;
 - Bob said a number of right-of-ways have been submitted as part of the land records, but have never gone before the Planning Commission for approval;
 - Bruce pointed out that there has to be a process for such review and approval, which we do not yet have;
 - Bruno said he assumed that if a right-of-way is recorded in a deed, then it must have gone before the Planning Commission, but Bob says that has not been done to his knowledge, though he has seen right-of-ways granted through the land records; any land development requires that the associated right-of-way has been approved by the Planning Commission;
 - There may be varying stipulations in right-of-ways over private land about what the landowner is allowing to happen on that right-of-way and what size it is; these are important in considering land development permit applications;
 - Deeds from 1992 to the present can be accessed through the portal on the Town website’s Town Hall page; deeds from years prior to 1992 can be accessed at Town Hall;
 - The process to seek approval of a right-of-way would be to submit a zoning permit application that the Zoning Administrator would then refer to the Planning Commission;
- The need to seek a variance to permit land development on lots that do not have 800 feet of road frontage;
- Differentiating Town Road and State Highway Right-of-Ways from a right-of-way over their property that one landowner gives to another landowner;
- Ed recalled that at an earlier meeting mention was made of the Planning Commission creating a survey to gather input for revising the Town Plan and the Bylaws. Chris and Bob verified that and invited Ed and everyone to write down questions and send them to the Planning Commission, including Ed’s question about considering a reduction in the amount of road frontage required;
- Chris noted the fact that Maidstone has had bylaws for about 50 years;
 - Bruno said he had talked recently with someone who had been involved in creating the Bylaw requirement for 800 feet of road frontage, who said the reason they put that in place was because they did not want a lot of the forest property developed. Bruno then gave an example of what could happen if the road frontage requirement was reduced, resulting in a lot of developed property in the Forest District;
 - Bob reminded all that the Town Plan is the basic document that describes what the Townspeople want; the Bylaws are based on that Plan and serve to implement it;
- Jim Bennett expressed his opinion that nothing had been resolved about the right-of-way question, that the Planning Commission members did not have any answers and had not done their homework.

Chris introduced the topics on the next two slides - nonconforming structures and nonconforming uses - and asked if anyone wanted to discuss them. Nobody had any comments regarding those. Mike said he thought those two topics were pretty clearly addressed.

Bob referred to the legislation under consideration by the State, which he said would have a big impact on our Bylaws if passed. In response to Ed’s question about how the legislation would impact housing, Bob explained that if passed it would allow a duplex where single family dwellings are allowed. That would require revision of our Bylaws. Mike said some of that legislation applied to places with public water and sewer systems. As he pointed out, the properties on the Lake are already constrained on the number of bedrooms, let alone two family houses, by very limited room for septic systems. Bob said the legislation does exempt areas such as Maidstone Lake, but would affect most of the rest of the Town. Caveats if public water and sewer systems are available would allow more dense development, but, as he said, the legislation has not passed yet. Ed asked if anyone had considered the fact that within 10 - 20 years, some kind of sewer system, perhaps a pump system, would be needed on the Lake. Both Chris and Bob said that has been spoken of, and that some lakes do have such systems. Thus far, Chris says ongoing monitoring attests to the Lake being very clean.

Chris expressed the hope that Bruno was satisfied with the discussion, as he had raised questions at the last Selectboard meeting. With nobody interested in continuing the discussion, Chris moved the meeting on to the next topic on the Agenda.

DRAFT REVISED APPLICATION FOR CERTIFICATE OF OCCUPANCY:

The Planning Commission has not discussed this topic in depth. The Draft has been emailed to everyone, so they can look at it on their own computer, as the display is too small to read easily. The changes to the current Application are highlighted in red.

Bruno asked if a State Statute requires a Town to have a Certificate of Occupancy. The response was that Towns are not required to have this Certificate in their Bylaws, but if they do have a bylaw requiring it, the State tells you what has to be included and required. He then asked if it is a Maidstone Bylaw, to which Bob answered that Maidstone does have such a Bylaw and has an Application for a Certificate; this has been issued, but has not been implemented consistently. This Draft reflects what is in the Bylaw, by State Statute. Mary explained that highlighted in the middle of the Draft Application are the requirements in the Bylaw, in accordance with State Statute, that a copy of VT Wastewater System and Potable Water Supply Permit is attached as well as a copy of the VT Building Energy Standards Certificate, either residential or commercial. She reported that she checked with VLCT and verified that the Zoning Administrator does not have to inspect the structure, but only to make sure that the State has issued a Certificate, which has been received by the Town and recorded properly, before the Certificate of Occupancy can be issued.

Bruno expressed his concern about “the State stepping in and getting involved with whatever their standards are.” Mary pointed out that since 1997 or 1998, builders in Vermont have been responsible for following the State’s Energy Standards , which have been updated several times, with the latest update due out later this year. If a builder does not follow the Standards, homeowners can sue the builder, as that is where the responsibility lies. Bruno said that we are probably the first town in the North Country to actually push these issues. He continued, saying, “I brought this up before to you guys that this is a small town and basically what you guys are doing is you’re bringing your luggage up with you when you came up here, and we don’t want that. I know it’s funny, Mary, but it’s the truth.” Mary responded, “I’m not saying it’s funny, but I didn’t bring this from anywhere. This is Vermont law. It has existed for close to 26 years.” Bruno said, “We’ve never had an issue back 20 years ago, and I don’t want to have an issue again. It just seems like you guys just keep bringing up more information, more information, more information. I was reading something that you guys pulled up the other day about some conservatory, or some river something that you pulled up. And I don’t even know what that was all about. You are doing some research on some stuff there, that I don’t have a clue what you are talking about. And are you reading everything, all the Bylaws on that or just part of it?” Mary said, “I don’t know what you are talking about. But the important thing about this particular thing is that it is in our Bylaws. It doesn’t **have** to be in our Bylaws. That doesn’t change the fact that it’s a State law.”

Mike asked how these Certificates are being used, and if anyone has ever asked for one, wondering if there is any purpose in doing this. From what she could gather from the VLCT lawyer, Mary said that a Certificate of Occupancy comes up when you sell your property. Mike said that thus far deeds have not been held up by this issue. He asked if there is a law that we have to have Certificates? Chris said it might be an issue with a mortgage company. He went on to say, “It’s not like we are trying to drag stuff up and cause problems for the Town. This Certificate is on the Bylaws. If the Town does not want it to be there, we take it off. But you should examine the ramifications from both sides.” Mary said from what she has read, the State is in a push to increase adherence to this law. For some reason, the people did decide to include it in 2016. Mike said he participated in revising the Bylaws in 2016, and the State’s push for adherence was the reason they thought it was a good idea to include this Bylaw. But here we are 7 years later, and we have never used them, and nobody has ever asked for them. Bob said the Town has issued Certificates of Occupancy, one for the Lufkin house built on Rte.102, and one for Raymond Lovell’s new building. Amy said that from the Town Hall’s perspective from the Clerk’s office, we need to make sure we are being consistent. It would be helpful to know the parameters, and if we are going to use them and when. Mary said that Bonnie created the current Certificate of Occupancy in 2017. The Bylaws state that if a Town has this Bylaw, the Application for Certificate of Occupancy is supposed to be handed out with the Zoning Permit Application.

Chris asked how else a Zoning Permit is concluded, if the Certificate of Occupancy is not used. Amy said that with the previous Zoning Administrator, there was no conclusion.

Chris Carazzo asked what code is being followed in Maidstone. Mike responded that it is not up to the Town to enforce the law, but to the State. It is up to the property owner to make sure that the applicable energy standards are adhered to, and it is up to the property owner to ensure that their builder adheres to the standards. Maidstone does not have building inspectors, so the Zoning Administrator has no way of knowing whether the building conforms to the State standards. Chris Carazzo asked what codes had to be followed for accessory buildings. Mike pointed out that State building codes or energy standards apply, but that a structure that is not heated or cooled does not have to comply with the energy standards, but has to adhere to other codes. Again, he said, that it is up to the builder to ensure that they are adhering to all applicable State codes. Mike repeated that the Town has no way of enforcing or knowing what building standards are being followed, as we do not have any building inspectors.

Ed suggested that the Town might want to get the Fire Warden, Bill Sanborn, involved in the issue of buried propane tanks, and that perhaps a question about this should be included on the questionnaire, as it is an important safety issue. He understands that there are laws about such things as well as about building standards, but if nobody is checking, how do we know what is really happening.

Bob informed Chris and Bruce that he had to leave at 7.30pm.

Chris said we will leave this as it is, and the question is whether or not the PC wants to get involved and refer this to the SB as something to be considered, or just leave it. Mary asked if the question is, "Do you want to continue with this Bylaw?" Ed said he thinks tonight's question is, "Do we want to continue the discussion?" Bob said it is no good having a Certificate of Occupancy if it is not up to the State Statutes; we cannot violate or encourage people to violate State law.

Chris said, "The other part of this is does the Town want to have Bylaws that try to inform the citizens and protect their interests? I think that is one of the things that the Certificate of Occupancy does. It tries to ensure that when your building is complete or whatever you have done before is, it carries with it the documentation that maximizes the value of your home, by providing the documentation that is used by a lot of people in the State that cites its (the property's) value. Somebody can look at Town Hall and see that the building is up to the standards of the time; its value can be set by that... The Certificate of Occupancy could be of value to the owner... Isn't that the spirit of what you want the Town Plan and the Bylaws to do - to try to protect the rights of the citizens and help them maximize the value of their investment in the Town?"

Chris said if no one wanted to make a motion about the Certificate of Occupancy, the meeting would move on. However, Jim Bennett said he had his hand up and asked who in Maidstone would say the electrical, plumbing, carpentry, insulation, etc. is up to code in his building, then said, "Do away with it." To his next question about who would inspect his electrical panel, Chris told him the electrical panel is the responsibility of the licensed electrician who installs it and the State. Chris thanked him for his input, explained that all of this had already been discussed, and that there were other issues that needed to be addressed at the meeting. He invited Jim to write down what he wanted to talk about and send it in, but Jim insisted on continuing to talk. He asked if the State was going to send someone to inspect his electrical box. Chris said, "You do not have to have the State come in and inspect your box. That is not what this is about." Jim asked what the occupancy permit was for. Chris replied, "It's a certification that the building has been completed in accordance with the standards that exist in the Bylaws and the State regulations, to the best of the ability of the people who have been involved with it." At that point, the meeting moved on.

The next slide contained suggested wording to clarify Bylaw §514 regarding Certificates of Occupancy, incorporating some of the wording from the State Statutes, and making it clear that the Zoning Administrator is only responsible for ensuring that the State Residential or Commercial Building Energy Standards Certificates are provided to the Town and recorded before the Certificate of Occupancy is issued. This rewording might be considered if the Planning Commission wishes to revise this part of the Bylaw. Chris pointed out that the State is in the middle of trying to reduce its emissions, so how well you are doing with this is extremely important.

DRAFT REVISED ZONING PERMIT APPLICATION:

Chris Carazzo asked if the Town would be implementing fillable forms for permits online. Amy replied that is definitely something we hope to do.

Zoning Administrator Mike Otis said he likes this draft, but would like to add a statement about the need for property owners to post a copy of the approved Zoning Permit within view of the road. Bob would like to add a clause about the Listers being authorized to access the property for appraisal purposes.

Jim asked, under Vermont State law, from the Town of Maidstone, who is legally allowed on his property at any given time, and who is allowed on his property if it is posted. Bob responded that the Listers do not go on anyone's property without permission if it is posted, and would need permission by law. Jim said the way he understands it, if his property is posted, even the Zoning Administrator is not allowed on his property even with an active building permit, unless the Zoning Administrator asks permission. He said that the Zoning Permit does not give that permission. Bob pointed out that the Listers and the Town may have a need to go on his property, and that this change to the Zoning Permit would authorize the Zoning Administrator at reasonable times to go on to your property to review the work, whether it is posted or not. Mike Otis added that if such permission is not expressly given, and a property is posted, he would have to deny the permit, because he would have no way of verifying anything on the permit. It would have to be an automatic denial. Mike said that unless the Zoning Permit Application is for something very simple, he would have to talk with the applicant and do a site visit.

Chris pointed out that "the implementation of the laws is meant to be supportive of people in the Town. The Zoning Administrator and the people who are trying to improve the Bylaws and write the Town Plan should not be considered people who are working against the interests of the people in the Town. They are volunteering their time to try to improve the Town and make it a better place, in support of what the people in the Town want. These are not our (the Planning Commission's) laws or rules. These are rules that have been put in place by the people in the Town, because this is what they want to do in their community. All we are trying to do is help people understand what they are and communicate that to them." Bob and Bruce both agreed.

A discussion continued about how to handle conditional use, which is an automatic referral, and variances resulting from denials; about when separate permits are needed; about the fact that everything has to go through the Zoning Administrator; about the separate fee required for a variance and if the fees are determined by the number of pages. Amy said there is a flat fee of fifteen dollars (\$15.00) for recording the Zoning Permit, and that fees are determined by the Selectboard.

The discussion concluded with Mary saying that she would make the revisions suggested and bring it back to the next meeting.

ESTABLISH DATE FOR NEXT MEETING:

This will be determined as soon as possible through email, once everyone knows what their upcoming schedules are, with the target of meeting in May to focus on beginning work on the Town Plan.

Although not all the business on the agenda was discussed due to members' time constraints, the meeting needed to be adjourned. Bob made a motion to adjourn; Bruce seconded. All voted in favor. The meeting was adjourned at 7:38 pm.

Respectfully submitted,
Mary von Alt