

**Planning Board Meeting –
December 16, 2013
Minutes**

Members Present: Betsy Rountree, Ruth Van Der Grinten, John Underhill, Judy Silver, Charles Kramer, Larry Vaughan, Errol Briggerman

Members Absent: Bob Mancuso, Joe Sparacia

Others Present: Commissioner Virginia Gray, Attorney Andy Gay, Glenn Strickland

Staff Present: Planning Director Zunilda Rodriguez, Planner David Bergmark

1. Meeting Called to Order

Mr. Underhill called the meeting to order.

2. Welcome and Recognition of Guests

Mr. Underhill welcomed all guests.

3. Chairman and Board Members' Comments

Mr. Underhill said the Town Board had approved the winery and distillery text amendment. He said a Zebulon businessperson had told him that a person from Zebulon might be coming to Wendell to open a distillery as a result of the text amendment Wendell approved.

4. Adjustment and Approval of Agenda.

Mr. Vaughan made a motion to approve the agenda. The motion was seconded and passed unanimously.

5. Public Comments

None.

6. Approval of Minutes

Mr. Briggerman made a motion to approve the minutes. Ruth Van Der Grinten seconded the motion. The motion passed unanimously.

7. Discussion, Consideration, and Action on the Following Items:

Item 7A: Zoning Text Amendment to increase the permitted size of accessory structures in the Residential Agricultural (RA) zoning district.

Mr. Bergmark said Section 4.4,b of the Town of Wendell Unified Development Ordinance (UDO) placed the following limitations on the number and size of accessory structures:

- “Accessory structures shall be limited to two per lot, except in the RA District.”
- “The aggregate floor area of all accessory use structures shall not exceed 50 percent of the floor area of the house.”

Mr. Bergmark said that Chapter 19 of the UDO defined an accessory building as “a building subordinate to the main building on a lot and used for purposes customarily incidental to the main or principal building and located on the same lot therewith.” He said accessory structures must be located in the rear or side yard for non-corner lots. Mr. Bergmark said on corner lots, accessory structures may only be located in the rear yard. He said commercial accessory structures may only be located in the rear yard.

Mr. Bergmark said that under the current standards, a property owner with a 2000 square foot home in the Residential Agricultural (RA) district may have any number of accessory structures so long as their combined square footage does not surpass 50 percent of the square footage of the principal structure. He said in this scenario, the accessory structures’ combined square footage would not be permitted to go beyond 1000 square feet. He said the property owner could have two 500 square foot accessory structures, or four 250 square foot accessory structures. Mr. Bergmark said that a typical detached 2 car garage (20 x 24) is approximately 480 square feet.

Mr. Bergmark said that the square footage of the principal structure was calculated as the total square footage of any enclosed space. He said that garages and screened porches were included in the calculation, but decks and attached carports were not. He said that for accessory structures, the square footage is calculated as all portions of the structure, whether they were enclosed or not. He said that any square footage on additional floors of the building were included for both principal structures and accessory structures.

Mr. Bergmark said that the purpose of limiting the size of accessory structures was to support the prominence and value of the principal structure (i.e. the dwelling). He said that the principal structure was intended to serve as the primary structure on the lot, both functionally and visually. He said it was staff’s experience that expansions of the principal structure typically added more value to the property and were better maintained than accessory structures. Mr. Bergmark said that it was also staff’s opinion that larger accessory structures were more prone to being used for business purposes, which are typically not permitted. He said that there were a limited number of ‘home occupations’ which may be permitted under certain circumstances. He said that home occupations could not include such things as retail sales of products, vehicle repair service or

sales, or commercial storage. Mr. Bergmark said that he left a list of all uses allowed in the RA district, as well as a copy of the standards for home occupations at each board member's seat.

Mr. Bergmark said that due to the differing needs that farms have, bona fide farms were exempted from the town's entire zoning ordinance. He said that farm structures such as barns were not subject to the town's accessory structure size limitations. He said that for purposes of determining whether a property was being used for bona fide farm purposes, state law provided that any of the following shall constitute sufficient evidence that the property was being used for bona fide farm purposes:

- a. A farm sales tax exemption certificate issued by the Department of Revenue.
- b. A copy of the property tax listing showing that the property is eligible for participation in the present use value program pursuant to G.S. 105-277.3.
- c. A copy of the farm owner's or operator's Schedule F from the owner's or operator's most recent federal income tax return.
- d. A forest management plan.
- e. A Farm Identification Number issued by the United States Department of Agriculture Farm Service Agency.

Mr. Bergmark said that prior to the adoption of the UDO, the Town's zoning ordinance stated that no accessory use building could exceed 50 percent of the floor space of the principal building, but limited the number of permitted accessory use buildings to one per lot. He said with the adoption of the UDO, the aggregate size limitation stayed the same, but the number of permitted accessory structures was increased. He said that in all zoning districts except the Residential Agricultural (RA) district, the property owner was allowed two accessory structures per lot. Mr. Bergmark said there was no limitation on the number of allowed accessory structures allowed in the Residential Agricultural (RA) zoning district.

He noted that the proposed text amendment was to amend Section 4.4,b,5 of the UDO to read as follows:

“5. For all zoning districts except Residential Agricultural (RA), the aggregate area of accessory use buildings shall not exceed 50 percent of the floor space of the principal use building. In the RA zoning district, the aggregate area of accessory use buildings shall not exceed 100 percent of the floor space of the principal use building.”

Mr. Bergmark said that the proposed change would increase the allowed aggregate size of accessory structures in the RA district from 50 to 100 percent of the floor space of the principal use building. He said this change would apply to both residential and commercial accessory structures. He said that any recommended change, if deemed necessary, should be accompanied

by a statement explaining how the change is consistent with the comprehensive plan, and is reasonable in nature.

Mr. Bergmark said staff recommended denial of the proposed zoning text amendment. He said it was staff's opinion that the existing size regulations adequately accommodated the need for accessory structures. He said if the proposed text amendment was approved, it was staff's concern that the new standard could result in an increased use of accessory structures for prohibited commercial activity. He said that the proposed language could potentially allow significantly larger accessory structures on commercial lots in the Residential Agricultural (RA) district.

Mr. Bergmark said the applicant was present to speak on this item as well. Mr. Bergmark asked if there were questions of staff, or if the Planning Board would like to hear from the applicant first.

Mr. Kramer asked if the house was large enough, could the property owner have two accessory structures with home occupations in both of them. Mr. Bergmark said that staff's interpretation was that you could not have two home occupations in accessory structures at the same site. He said the general standards for home occupations said that the home occupation must be clearly incidental to the residential use of the home.

Mr. Underhill asked why the Town Board decided to increase the number of accessory buildings allowed on a lot, but not the size of the buildings. Mr. Bergmark said he thought that decision was based on recognition that in more rural areas with larger expanses of land, a property owner might need storage uses less centralized. He said limiting the overall size still constrains accessory structure use somewhat, but the change was an attempt to be somewhat more flexible.

Mr. Gay introduced himself as the attorney representing Mr. Strickland on a number of matters related to his property. He said that was what gave rise to this text amendment request by the applicant.

Mr. Gay said that Wendell's UDO was similar to many zoning ordinances in other municipalities. He said the town tried to apply rules that were consistent to all of its citizens. He said what he found when doing an inventory of Wendell's Rural Agricultural (RA) district was that you did not find small cookie-cutter lots. He said in these more rural areas he found larger tracts, often the result of old farmland that was split up and handed down to a property owner's children.

Mr. Gay said what he found was that most of the houses in the RA district were small houses. He said it became clear to him that although improving some of the homes would be a good idea, there was a significant need for things to be put indoors, whether they were old farm implements or other items accumulated over the years. He said there was a need for accessory buildings in

the RA district. He said a lot of the accessory structures were dilapidated, to the point of almost being dangerous. He said that he lived out in the country in Zebulon. He said property owners continued to use these existing structures. Mr. Gay said increasing the amount of area you could have for accessory structures would create a certain amount of revitalization. He said if you cleaned up around the yard, the house would probably look better.

Mr. Gay said staff expressed a concern for increased use of accessory structures for prohibited commercial activity. He said it was the job of the zoning administrator to enforce their ordinance, but it was not a reason to stop trying to address what the text seemed to need. He said if your lot was large enough and if you could build according to Wendell's standards, that the Town should allow not 50 percent, but 100 percent. He said this would allow the property owner to build accessory structures that had a floor area equal to the primary structure.

Mr. Vaughan said he needed to know how Mr. Strickland's structure would be used. Mr. Vaughan asked if the applicant had all the buildings in place already.

Mr. Gay said those were good questions, but he did not think it would be appropriate to address those questions as part of this meeting. Mr. Gay said the Planning Board should look at the whole code to see what was reasonable, rather than look at Mr. Strickland's specific situation.

Mr. Vaughan said he did not understand how much storage is really required by people who live in these rural areas. Mr. Gay said Mr. Vaughan must not have a 140 tractor. He said country folk seem to hang on to their equipment and belongings. He said the old lean-to sheds and other accessory structures were not all bad. He said this change would give property owners who have the room the opportunity to build an accessory structure.

Ms. Van Der Grinten asked if the RA district was primarily in town or out of town. Mr. Bergmark responded that the vast majority of the RA district was outside of the corporate limits. Ms. Van Der Grinten said she didn't know what to think. She said having a bigger building would not cause people who don't clean up their yard to suddenly clean up their yard. She said those who did not maintain their existing accessory structures would not have acted differently if they had had a larger building.

Mr. Bergmark said property owners could repair their existing accessory structures. He said the UDO did not prohibit that. He said the text amendment proposal dealt with expanding accessory structure sizes or building new accessory structures.

Mr. Briggerman asked if there was a limitation on the size of the lot for someone who had a 2,000 square foot house in the RA district and wanted to build a 2,000 square foot accessory structure. Mr. Bergmark said the property owner would still need to meet setback requirements. He said any new lot created in the RA district had to be at least one acre in size and noted there were some existing lots in the RA district that did not meet that newer size requirement. Mr.

Bergmark said the current setback for accessory structures is only 5 feet, regardless of the size of the accessory structure.

Mr. Briggerman asked if the finish on the accessory structure had to match the house. He said it was his understanding that metal buildings were not allowed. Mr. Bergmark said metal buildings were not allowed for residential accessory structures. He said if the house was brick, the accessory structure would not have to be brick, so long as it was not metal.

Mr. Underhill asked if there was anyway the Planning Board could base the accessory structure size standards on the size of the lot. He said a 2,000 square foot accessory structure on a smaller lot would not look good, but if you had a 5 acre lot and backed the accessory structure away from the street he didn't think it would look bad. Mr. Vaughan said it would make a difference based on how visible the structure was.

Mr. Bergmark said the Planning Board could make a recommendation that tied the size standard to the lot size if they wished to do so.

Mr. Underhill said he could see situations where a prior farmer got bought out but still owned 10 acres of land and had greater storage needs.

Ms. Van Der Grinten said her garage was bigger than her house. She said her buildings would not be allowed under the UDO. She said her husband used the garage for his tools.

Mr. Vaughan asked if a part-time farm qualified for a farm exemption. Mr. Bergmark said the part-time farm would qualify for an exemption so long as he could provide one of the five items called for in the bona fide farm bill. He said he would think they could. Mr. Bergmark said some of the methods of qualifying as a bona fide farm required larger tracts of land, but at least one did not.

Ms. Van Der Grinten asked if a property owner could request a variance if they had greater storage needs. Mr. Bergmark said someone could request a variance, but it would be difficult to obtain a variance for such a request due to the guidelines for approval set by general statute.

Ms. Van Der Grinten asked what staff's opinion was of having the accessory structure size standard vary according to the size of the lot. Mr. Bergmark said he could understand Mr. Underhill's perspective, but he wasn't sure that amending the applicants request to allow different amounts of accessory structure space according to the size of the lot would change staff's recommendation. Mr. Bergmark said one of the concerns expressed was that increasing the permitted size of accessory structures could result in a greater potential for non-permitted commercial activity to occur within accessory structures. He said that concern would still be valid, even if larger accessory structures were limited to larger lots. Mr. Bergmark said it was very difficult to prove a commercial use is occurring within an accessory structure on a

residential lot. He said he thought that type of activity was a little more likely to occur if these structures were allowed to be larger.

Mr. Underhill asked if anyone was prepared to make a motion on the proposed text amendment. Ms. Van Der Grinten asked if the Planning Board was going to recommend amending the proposal to adjust for the size of the lot. Mr. Vaughan said he would personally like to hear more discussion about what the other Planning Board members thought. Mr. Vaughan said that if the Planning Board was going to recommend that the size standard varied according to the size of the lot, perhaps this was something that should be further studied by staff.

Mr. Underhill asked if the Planning Board could table this item until the next meeting. Mr. Bergmark said the Planning board could table this item, but the Town Board could eventually make their decision without a recommendation from the Planning Board if enough time passed.

Ms. Rountree made a motion to table this item until the next meeting. Mr. Underhill said he had a motion to table this item until the next meeting, when planning staff could provide additional information. Mr. Bergmark asked what type of information the Planning Board desired. Mr. Underhill said perhaps staff could provide some type of ratio that varied the permitted size of the accessory structure based on the size of the lot. Mr. Bergmark said he could create different options, but that he did not think it would be as mathematical as the Planning Board might hope. He said he did not think adding such a ratio would change the stance of the Planning Department.

Mr. Underhill said the Planning Board still had a motion on the table to table this item until the next meeting. Mr. Vaughan seconded the motion. The motion passed unanimously.

8. Adjourn to Next Regularly Scheduled Meeting

Ms. Rountree made a motion to adjourn. Mr. Vaughan seconded the motion. The vote was unanimous. The meeting was adjourned at 7:45 p.m.