

SALISBURY PLANNING AND ZONING COMMISSION

PLANNING MEETING MINUTES

January 31st, 2022, 5:30 PM

Remote Meeting by Live Internet Video Stream and Telephone

1 **Members Present:**

2 Dr. Michael Klemens (Chairman)

3 Cathy Shyer (Vice Chair)

4 Martin Whalen (Secretary)

5 Bob Riva (Regular Member)

6 Allen Cockerline (Regular Member)

7 Dr. Danella Schiffer (Alternate)

8 Debra Allee (Alternate)

9

Staff Present:

Abby Conroy, Land Use Administrator (LUA)

Members Absent: N/A

10 **Brief Items and Announcements**

11 1. Call to Order/ Establish Quorum

12 Chairman Klemens called the meeting to order at 5:31 p.m. All regular members were in attendance
13 (Chairman Klemens, Vice Chair Shyer, Secretary Whalen, Commissioners Cockerline and Riva) which
14 established a quorum for the meeting.

15

16 2. Approval of Agenda

17 *Motion:* To approve the agenda as presented

18 Made by Cockerline, seconded by Riva

19 Vote: 5-0-0

20

21 3. Minutes of November 29, 2021

22 Alternate Schiffer presented four comments:

23 Amendment #1 (Line 62): Modification of "Zoning regulations are inconsistent" to "Zoning regulations
24 are often inconsistent."

25 Amendment #2 (Line 68): Modification of the word "immigration" to "new residents."

26 Amendment #3 (Line 76): Modification of the word "understating" to "understanding"

27 Amendment #4 (Line 80): Modification of the word "between" to "among."

28

29 *Motion:* To approve the minutes of November 29, 2021 with presented amendments

30 Made by Cockerline, seconded by Riva

31 Vote: 5-0-0

32

33 4. Minutes of December 13, 2021 - *Pending*

34 5. Minutes of December 20, 2021 - *Pending*

35 6. Minutes of December 28, 2021 - *Pending*

36 7. Minutes of January 18, 2022 – *Pending*

37

38 The minutes were not available for consideration.

39

40 8. Correspondence

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41 LUA Conroy presented a correspondence from Steven and Gail of Goldberg of Lakeville dated
42 01/24/2022. The Goldbergs expressed their concerns over a decision by the Commission to approve a
43 new restaurant in a heavily trafficked area of Lakeville with ‘limited parking’.

44

45 **Public Comment**

46 9. Public Comment – Public comment is restricted to items that are neither on the agenda nor the
47 subject of any Planning & Zoning application or action and are limited to three minutes per person.

48

49 There was no public comment.

50 **Other Business**

51 10. Draft Report of Potential Violation Form Referral

52 Chairman Klemens stated that the *Land Use Report of Potential Violation* form was drafted in
53 collaboration with Vivian Garfein, Peter Neely, and Maria Grace of the joint Inland Wetlands &
54 Planning & Zoning Commission Subcommittee. LUA Conroy and Chairman Klemens suggested the first
55 line be emphasized via bold and capitalization:

56 *“It is not the intent of the Commissions, nor in the interests of the Town, to have enforcement be used,*
57 *or attempt to be used, as leverage or retaliation in unrelated private disputes; or to serve as an*
58 *escalator within such disputes.”*

59 Chairman Klemens noted that identification of the reporter is required on the form, with discretion
60 utilized by the Land Use Administrator to pursue a documented violation.

61 Alternate Schiffer suggested the following rewrite of the first paragraph of the form:

62 *“The Town of Salisbury and its Commissions have ordinances and regulations in place to protect*
63 *Salisbury from adverse impact on its environment, public health, safety, and general welfare of the*
64 *community. When necessary, enforcement is used to correct violations. Enforcement should not be used*
65 *as leverage or retaliation in private disputes or to serve as an escalator within such disputes. The*
66 *Town’s Land Use Administrator/Zoning Enforcement Officer will proceed with caution and deliberation,*
67 *including suspension of enforcement action with respect to complaints that are perceived to be*
68 *retaliatory in nature and/or inconsistent with the Town’s best interest.”*

69 She suggested the addition of a sixth priority point on the form:

70 *“6. Violations that are counter to Town ordinances and regulations.”*

71 LUA Conroy stated that the joint Commission expressed disagreement regarding use of drone footage
72 to provide evidence for filed complaints.

73 Vivian Garfein (Chair of the joint Inland Wetlands & Planning & Zoning Commission Subcommittee)
74 joined the meeting at 5:50 p.m. She requested that the presented modifications of verbiage be

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75 submitted in writing for review by the joint Commission. Chairman Klemens indicated that legal
76 counsel would review the language prior to finalization of the form. He stated that the discussion of
77 the form will be added to the agenda of the joint Commission on Friday, February 4th 2022.

78 Vivian Garfein left the meeting at 5:57 p.m.

79 11. Draft Regulation Revision Overview

80 LUA Conroy outlined the following types of amendments to the Zoning Regulations: general edits for
81 consistency; date corrections; index page corrections; replacement of the use of *Conservation*
82 *Commission with Inland Wetlands and Watercourses Commission*; updates to the Zoning operations
83 adopted by the Commission in 2019; consistency of terms (e.g., *right of way, storm water, run off*);
84 elimination of references to non-profits and not-for-profit; and alphabetization of terminology
85 definitions.

86 LUA Conroy presented specific in-text revisions and amendments for Commission review within Article
87 III, Article V, and the Appendix sections of the Zoning Regulations. Highlights from the discussion are as
88 follows:

89 *Within Article III: Lot and Building Dimensional Requirements (Section 300):*

90 1. The insertion of Land Use Tables into designated sections of text rather than text references to the
91 tables at the end of the regulation document.

92 2. The deletion of the following regulation:

93 *“Section 301.1 – Minimum Lot Area in the R-10, R-20, C-20, CG-20, LI-1 Zones:*
94 *In these zones the area of any water body, watercourse, or inland wetland as defined by Salisbury*
95 *(Inland Wetlands and Watercourses Commission) shall not be included in the calculation of the required*
96 *minimum area of any lot.”*

97

98 LUA Conroy stated that development within these parts of the Town predate the adoption of Zoning
99 and many are likely non-conforming. She stated that elimination of this section of the regulations
100 would make these preexisting lots more conforming.

101 3. The deletion of the following clause within *Section 301.2 – Exceptions to Minimum Lot Area in an RR-*
102 *1, RR-1-V, and LA Zones* as per the October 4, 2021 Commission meeting:

103 *“In the LA zone subject to the same requirements and provided that the lot has a minimum square of 90*
104 *feet, a lot of a single-family dwelling may be approved for a minimum lot area of 20,000 square feet.”*

105 She stated that all lots within these zones should meet the minimum requirement of 40,000 square
106 feet with the dwelling being serviced by town water and town sewer.

107 4. Within the definition of the term *“buildable area”*, LUA Conroy proposed the following amendments:

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108 *“A buildable area shall be a contiguous area within a lot that contains no inland wetlands soil,*
109 *waterbodies, watercourses, utilities, conservation or access easements or right-of-way, and where not*
110 *more than 5% of such rectangular area consists of naturally occurring slopes exceeding 25% as*
111 *measured using 2-foot contour intervals as established based on a field survey. The buildable area shall*
112 *not include required setbacks (to property lines? to wetlands?)”*

113 Commissioner Cockerline requested clarification of the regulations with regards to the distance of
114 placement of a subterranean septic system from a property line. LUA Conroy stated that septic systems
115 should be placed within the buildable area and comply with building setback lines, but that Zoning
116 does not regulate underground structures.

117 Vice Chair Shyer inquired of the process to approve an exception to the amended definition of a
118 *“buildable area”*. LUA Conroy stated that an exception (in the case of septic system placement) would
119 require approval by the Zoning Board of Appeals and assessment by Torrington Area Health District
120 (TAHD).

121 5. The following amendments of Section 302.1-302.4

122 *Each lot in the RR-1, RR-1-V, RR-3, MR, RE, and LA zones shall contain at least one buildable area which*
123 *shall be a minimum of 40,000 square feet.*

124 *All buildings, structures, and septic systems shall be located within a buildable area except accessory*
125 *buildings or structures in accordance with section 304.1, and wells which may be located outside of the*
126 *buildable area and as allowed under sections 302.3 and 302.4.*

127 *For lots that legally existed prior to the effective date of the regulation (3.10.2010), as evidenced by*
128 *deed recorded in the office of the Town Clerk, the requirements of section 302.1 and 302.2 shall not*
129 *apply to the expansion of existing buildings or structures.*

130 *For lots that legally existed prior to 3.10.2010, as evidenced by deed recorded in the office of the Town*
131 *Clerk, new buildings, structures, or septic systems that cannot be placed in a buildable area may be*
132 *constructed provided a Special Permit is obtained from the Commission.*

133 *a. In deciding on the Special Permit, the Commission must first find that:*

- 134
 - 135 *● the building, structure, or septic system cannot be placed within the buildable*
 - 136 *area; or*
 - 137 *● that placement outside of the buildable area will result in significantly less*
 - 138 *grading and other disturbances to the natural environment; or*
 - 139 *● that placement outside of the buildable area preserves a scenic view or*
 - 140 *significant natural feature.*

141 LUA Conroy stated that the modification of the above sections provides clearer criteria for special
142 permit approval of a new building, structure, or septic system outside of a buildable area.

143

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144 6. The following definition of an “*accessory storage building*” moved to the Appendix Section of the
145 regulations:

146
147 *“Accessory Storage Building: A detached building not equipped with sanitary facilities or water services,*
148 *nor otherwise designed or used for human habitation or housing of animals.”*

149
150 She asked the Commission whether the term “*accessory storage building*” should include the word
151 “*structures.*” With the inclusion of the word “*structures,*” it would grant eligibility for reduced setbacks
152 for propane tanks despite contradiction with the building code. The Commission agreed that propane
153 tanks should be treated as structures and must meet underlying setback requirements. LUA Conroy
154 asked the Commission to consider creating Regulations that contain standards but that don’t
155 necessarily require a permit for certain types of structures or uses going forward.

156
157 7. The following amendment of Section 304.1:

158
159 *“In the R-10, R-20, C-20, and CG-20 zones or on other residentially zoned lots of 40,000 square feet or*
160 *less, an accessory structure may be located in a front yard setback provided:*

- 161 • *the principal building is located in the front yard setback; and*
162 • *the accessory building or structure is no closer to the front street line than any part of the*
163 *principal building thereby promoting a street wall;*

164
165 LUA Conroy requested allowance for accessory structures to be within five feet of setback
166 requirements if the lot is less than 40,000 square feet.

167
168 8. The amendment of Section 304.3 – *Exceptions to Yard Setback Requirements for Building Projects*
169 *and Additions:*

170
171 *“The following building projections, additions, or structures shall be exceptions to yard setback*
172 *requirements:*

- 173
174 *a. The projection or overhang of not more than one foot into a required yard of a pilaster,*
175 *roof, cornice, or similar architectural features.*
176 *b. Any feature projecting into the front, side, or rear yard setback for the purpose of either:*
177 • *Access for handicapped persons, which is necessary or is required according to*
178 *the State of Connecticut Building Codes, or*
179 • *A fire egress required by the State Building Code or the Connecticut Fire Safety*
180 *Code, provided that the applicant submits a copy of a written statement of*
181 *approval for the proposed addition signed by the Fire Marshal.*
182 *c. Driveways, sidewalks, wells, and unroofed entry landings and steps. Specifically excluded*
183 *are decks, patios, and similar structures.”*

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184 Chairman Klemens stated that a front walkway that abuts a sidewalk or the presence of a paved
185 driveway within a residential front yard is a violation of setback requirements. He continued that
186 modification of these regulations would normalize these scenarios within residential zones.

187 10. The following amendment of Section 305.1 (originally 305.2):

188 *“Section 305.1 – Exceptions for Accessory Buildings or Structures:*

189 *An accessory building or structure may be located less than fifty (50 feet) from a wetland or*
190 *watercourse subject to securing a Special Permit and meeting the following requirements:*

191 *a. The proposed accessory building or structure*

- 192 ● *Shall be a minimum of twenty (20) feet from all property lines*
- 193 ● *Shall not be equipped with sanitary facilities, water service, or otherwise be designed for human*
194 *habitation or for housing animals.*
- 195 ● *Shall be no more than fifteen (15) feet in height*

196

197 *b. The proposal shall be designed to protect natural drainage systems including streams, wetlands, and*
198 *swales, and shall prevent sediment from the project impacting the resource. The plans shall*
199 *demonstrate that the natural vegetation has been retained, protected, or supplemented, wherever*
200 *practical...*

201 *c. A minimum of a 25-foot-wide WETLANDS AND WATERCOURSES BUFFER shall be maintained or*
202 *provided adjacent to the wetland boundary for the purpose of maintaining water quality, slowing and*
203 *treating the flow of existing and potentially increased water run-off into a wetland, and to compensate*
204 *for the loss of vegetation due to the building construction...*

205 *d. Any land disturbance of 500 square feet or more shall require submission of a Stormwater*
206 *Management Plan which shall include low impact development (LID) stormwater treatment*
207 *techniques...*

208 LUA Conroy stated that revision of this regulation would allow for setback exceptions of accessory
209 buildings and structures in close proximity to a wetland or watercourse, in absence of an impervious
210 surface requirement, on properties outside of the Lake Protections Overlay District (LPOD). She stated
211 that the concept of a *“wetlands and watercourses buffer”* is designed to offset a construction- induced
212 increase in impervious surface area near a wetland or watercourse outside of the LPOD.

213 11. The following definition for maximum building height and standardization of measure for Section
214 309.2:

215 *“a. The maximum building height requirements shall be no more than thirty-five (35) feet for gable, hip,*
216 *and gambrel roofed buildings, and thirty (30) feet for flat, mansard, or any other type of building roof.*

217 *“b. The building height shall be measured as the vertical distance between a horizontal plane passing*
218 *through the average elevation of the finished lot grade at the base of the building to:*

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- 219 ● *The midpoint between the eaves and ridge of the highest roof for a gable, hip, or gambrel,*
220 *roofed building, or*
221 ● *The highest point of the highest roof (including the top of the parapet) for a flat, mansard, or*
222 *any other type of building roof.*
223 ● *The average elevation of the finished lot grade at the base of the building shall be determined*
224 *from the measurements taken at the finished grade every five (5) feet along the building walls.”*
225

226 LUA Conroy stated that the measurement of building height should be standardized between principal
227 buildings and accessory structures as a safety precaution. She also stated that Mat Kiefer (Lamb Kiefer
228 Land Surveyor LLC) requested reconsideration of the regulation to increase the distance between
229 measurements beyond every five feet. Chairman Klemens asked the Commission to consider sending
230 Section 309.2a and 309.2b to Mr. Kiefer for review and development of potential modifications.

231 Under *Article V – Non-Conforming Uses, Buildings, and Lots (Section 500)*:

- 232 1. The addition of the definitions of a “*nonconforming lot*,” “*nonconforming building or structure*,” and
233 “*nonconforming use*” to the Appendix from Section 500.

234 Chairman Klemens suggested modification of the term “*nonconforming situation*” to
235 “*nonconformities*.”

- 236 2. The following amendment of *Section 500.1: Continuance of Nonconforming Situation*:

237 “*Once a nonconforming situation or any portion thereof has been abandoned or changed so that it*
238 *conforms to these Regulations, it shall not revert to a nonconforming situation.*”

239 LUA Conroy stated that the language of the current regulations implies that modifications cannot be
240 made to nonconforming buildings or structures. She requested Commission consideration of situations
241 when a nonconforming use building or structure could have the ability to expand or enlarge. Chairman
242 Klemens suggested that the expansion of a nonconformity could be approved if there is evidence for
243 public benefit. LUA Conroy requested Commission consideration of the requirement of a Special Permit
244 within Section 502.

245 Chairman Klemens suggested the addition of mylar documentation to Section 503.2. LUA Conroy
246 indicated that discussion of mylar documentation would go under a different section of the
247 regulations. She stated that scenarios that require a site plan and/or a Special Permit should have a
248 mylar filed prior to zoning permit approval. She clarified that mylar forms become a permanent record
249 once filed within the Town Clerk’s office.

250 Under the *Appendix- Definitions* section:

- 251 1. The alphabetization of all defined terms.

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252 2. The deletion of the following statement within the definition of an *“accessory building or structure:”*

253 *“...or on a contiguous lot both of which are under the same ownership in all respects as to title and*
254 *fractional interest.”*

255 Vice Chair Shyer requested Commission reconsideration of the *“accessory building or structure”*
256 definition due to its potential effect on infrastructure within the Town. Alternate Schiffer expressed
257 additional concern about large accessory structures (e.g., guest houses) utilized as short-term rentals.
258 LUA Conroy stated that the addition of a ratio between a principal structure and an accessory structure
259 could clarify the regulation. Chairman Klemens stated that property within a residential zone used
260 solely as a short-term rental would be classified as a hotel and be prohibited under current regulations.

261 3. The removal of the term and definition of *“accessory building detached”* due to redundancy. By
262 nature, accessory buildings and structures are detached from a principal structure.

263 4. The addition of the following term and definition:

264 *“Accessory Storage Building: A detached building not equipped with sanitary facilities or water services,*
265 *nor otherwise designed or used for human habitation or housing of animals.”*

266 Commissioner Cockerline requested discussion of the definition of *“impervious surface.”* He inquired
267 whether there was a standard of measure for determination of an impervious versus pervious surface.
268 LUA Conroy presented the following definition:

269 *“Impervious Surface: A surface that has been compacted or covered with a layer of material so that it is*
270 *highly resistant to infiltration by water. Impervious surfaces shall include gravel driveways and parking*
271 *areas, including a patio as defined herein.”*

272 LUA Conroy displayed additional comments adjacent to the proposed impervious surface definition:

273 *“Impervious Surfaces – Typically artificial surfaces that do not allow the penetration or infiltration of*
274 *precipitation, such as concrete, asphalt (bituminous concrete), brick, stone, or lattice pavers, etc.,*
275 *including, but not limited to, pools, roof tops, paved and gravel driveways, paved and gravel parking*
276 *areas, tennis courts, sport courts, basketball courts, decks (with less than a 1/8” gap between planks or*
277 *located over an impervious surface), ground-or-pole-mounted energy systems, and all other surfacing*
278 *that is considered impenetrable to precipitation.”*

279 LUA Conroy stated that a contracted engineer provides technical justification for an impervious versus
280 pervious material and/or surface. Commissioner Cockerline requested that the Commission receive
281 technical counsel on the classification of an impervious versus pervious surface for greater consistency
282 and standardization of special permit approvals.

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283 5. The addition of definitions for “*Ordinary High-Water Mark (Lake, Pond, Vernal Pool)*” and *Ordinary*
284 *High-Water Mark (Watercourse)*” to the Appendix.

285 6. The addition of the terms “*hot tubs*,” “*basketball courts*,” and “*generators*” to the definition of the
286 term “structure.”

287 LUA Conroy provided templates of alternative definitions of the term “*structure*” from Kent, Litchfield,
288 Torrington, New Hartford, New Milford, Winsted/Winchester, Bristol, Danbury, and Greenwich Zoning
289 Regulations for Commission review.

290 7. The addition of the following term and definition:

291 “*Temporary Event: A temporary event is a gathering for forty (40) or more people occurring no more*
292 *than four (4) times per year on a single property.*”

293 Chairman Klemens stated that the number “40” was suggested by both Commissioner Cockerline
294 (Whippoorwill Farm) and Linda Smith (Long Pond Farms and Cellars LLC). Alternate Schiffer asked
295 whether event duration needed specification within the proposed definition. LUA Conroy displayed the
296 following modified regulation of a temporary event:

297 *Section 215: Temporary Events*

298 *215.1: Any event that does not exceed three (3) days shall not require a zoning permit.*

299 *215.2: Any event which exceeds three (3) days shall require a temporary zoning permit in accordance*
300 *with Section 906 of these regulations.*”

301 Chairman Klemens and Vice Chair Shyer suggested an amendment to provide tighter parameters to
302 temporary event attendance thresholds. Commissioner Cockerline recommended an event with less
303 than forty (40) people should not require a zoning permit. He added that the regulation should allow
304 for family weddings but exclude monetization/commercial use within a residential neighborhood.

305 **Adjournment**

306 *Motion:* To adjourn the meeting at 8:24 p.m.

307 Made by Cockerline, seconded by Shyer

308 Vote: 5-0-0

309

310 Respectfully Submitted,

311

312 Sara C. Woloszyn, Recording Secretary