

**TOWN OF WEST HARTFORD
PUBLIC HEARING REGARDING ORDINANCE REVISING
VARIOUS DEFINITIONS FOR ZONING PURPOSES
September 24, 2013**

The hearing was called to order at 6:40 p.m.

President Slifka: We are going to start the 6:30 public hearing. This is regarding an ordinance revising various definitions for zoning purposes. Could we have a roll call please, Ms. King.

Present: Councilors Adler, Cantor, Captain, Davidoff, Doar, Hall, Kindall, and Slifka. Councilor Casperson was absent.

President Slifka: We will begin with the presentation by the town manager, or Mr. Alair.

Mr. Van Winkle: Thank you, Mr. Mayor. We have our deputy corporation council, Pat Alair, who is going to talk about a portion of this ordinance and our town planner, Todd Dumais, who is also here to help us understand what these changes are.

Mr. Alair: Good evening. At this point, Todd and I have talked about this ordinance a couple of times with TP&Z, so we kind of have a pattern down, the dog and pony show, if you will. Todd does the part that involves math. The ordinance in front of you tonight makes a number of changes to the definition section in our zoning ordinances, section 177-2. A number of the definitions are completely unrelated, but when we go into this section, which we try to do as infrequently as possible, we try to clean up everything that's outstanding while we're at it, so there are a number of different things going on here. Let me start by pointing you to subsection 8 in the ordinance, which adds a sentence, which simply says that where a term in the ordinance is not defined, we will look to state law definitions for an applicable definition. You'll see a number of places in the ordinance as we go forward that are good examples if I were doing that, but the basic principle is we have zoning ordinances; those zoning ordinances often work in conjunction, for example, with the building code. There are terms defined in the state building code and, by practice, that is how we define those terms in our zoning ordinances, but there is nothing in the ordinance that actually says that. So, we are adding a sentence to make that connection. If you flip to the second page of the text, you'll see an example of one thing that that first change does for us. We are deleting the definition of alcohol. If you read that definition, right now all it does is say see chapter 545 of the general statutes, but we can now eliminate that definition because subsection A does that for us. There are several alcohol-related definitions in here and we're simply deleting them because now we can refer to the statutes, and as the statutes get changed, by the way, we don't have to go back and amend our ordinances to keep up.

On the third page, you have 2 definitions being deleted; the definition of base flood and the definition of beer. Beer is one of the alcohol definitions that goes away. Base flood is being deleted. You may, many of you were on the council when recently we adopted a model flood plain ordinance, which FEMA required us to adopt in order to keep flood insurance. That model flood plain ordinance actually has a definition of base flood in it and that was intended to supplant what was already in our ordinances, so we are now deleting this second definition, which is older and not consistent with the new definition to avoid inconsistency.

Further down that page in the definition of building coverage, this is one of the definitions in our ordinances which is there, but is absolutely never used anywhere in the code. Though we define building

coverage, the term used in the ordinance is actually lot coverage, which is the inverse fraction. So, rather than change every ordinance section where the term lot coverage is actually used, we're revising the definition of building coverage to say it also means lot coverage. On the following page at the bottom, we get to a definition, which has caused a certain amount of heartache over the years, but we are somewhat fortunate that it is no longer quite the problem it was; the definition of family. Until relatively recently a significant segment of our population could not legally marry and could not, therefore, be considered a family under our ordinances. Our ordinances required those couples to have a zoning permit from the town of West Hartford, which was renewable annually. The reality was that we had no way of policing how many unmarried couples were living in apartments in West Hartford. It simply was not feasible. We are deleting the requirement that those people get an annual permit. We are retaining the requirement that 4, 5, or 6 unrelated individuals living together are required to get a special use permit from the Planning and Zoning Commission. That has always been in place in an effort to control what amounts to illegal boarding houses or rooming houses. The TP&Z, on an infrequent basis, gets applications for such facilities and we are not eliminating that requirement. We wrote the ordinance to be clear to that effect, but what we are eliminating is the requirement that from 1 to 3 unrelated individuals living together do not require a permit from us.

On the following page the definition of flood hazard boundary map, again there is a separate definition in the recent model FEMA ordinance and we're repealing this definition because it was inconsistent with the one in that later section. Which brings us to floor area ratio and Todd can explain that one.

Todd Dumais: Thank you, Pat. This is a concept that would introduce structured parking or parking garages that, if constructed below a building, wouldn't count towards FAR. FAR is one of our controls to measure the bulk or mass of a building. It's the total gross floor area into the lot area, total lot area of a lot. As you look around the country and in Connecticut, towns and cities that have increasingly urban centers that were developed prior to the automobile age have a scarcity of parking or land to create new parking. So if we want to see continued reinvestment in our centers, this is a concept that would do 2 things. It would provide for parking to be constructed, not on a field and under a building, and not count towards the building's FAR. That's important because if you count it towards a building's FAR, it's a disincentive to anyone looking to do a project or reconstruct or reinvest because it would preclude additional FAR from building floor area or usable floor area above the parking structure, so this is a concept that we're suggesting. Structured parking located below the building is exempt from FAR calculations.

Mr. Alair: The next change is at the bottom of the following page. It is the change to the definition of hotel. Under our current ordinances, a hotel can have only a general kitchen and dining room. The problem with that is that the modern hotel has catering facilities, banquet facilities, it frequently has auxiliary kitchens for those facilities, and may have in-room mini-bars. They may have in-room extended stay suites with kitchens in them, none of which comply with this definition. In fact, not too long ago when we were looking at RFPs for a hotel, I think we had 8 responses and, if memory serves, exactly 1 of them would have complied with our definition of a hotel. Obviously, we'd have 1 hotel in town. We don't have people knocking on a regular basis to build hotels, so this is simply a definition that has never been changed since it was adopted probably in 1972, and one of those things as we looked at it we thought this is a problem. So we are revising it to allow for general kitchen and dining facilities, but not exclusively general kitchen and dining facility. The "only" is being removed to allow for additional facilities beyond that such as, you know, the Resident's Inn kind of a situation where you have a hotel room that's still rented by the night, but has cooking facilities in it for somebody who wants to stay longer.

In the definition of, 2 pages further, in the definition of lot, rear, you'll see that this is actually 1 of 2 definitions where we are making a slight change and rather than trying to read it, which will make your head hurt, suffice it to say we are removing a phrase, which is simply not needed. The section refers to a

driveway serving not more than 2 lots. We have a definition of driveway. By definition, a driveway cannot serve more than 2 lots, so that additional clause in the sentence is surplusage, it is unnecessary, and as you try to read the sentence as a whole, you hit that phrase and I get calls on a regular basis for people trying to understand what it says because they get hung up on that cumbersome phrase. So, it's simply being removed to make everybody's lives easier.

Further down on that page the definition of lot width; this is another peculiarity in our ordinances. As with the term building coverage, the definition does not match how the term is used. We define the term "lot width." In the ordinance we use average lot width. Now, the definition in our ordinances says that one measures lot width at one point. If you actually use average lot width, how do you average one point? It doesn't work. Now, despite the fact that we had a zoning appeal on this issue and won the appeal, we have decided to take this opportunity to cure that to clarify it so it doesn't become a problem any further. What we've simply done is make a provision that matches what the ordinance actually does. Under the definition of sign permit, many years ago when our ordinances were written the point of contact between the applicant and the town as the Building Department. One would come in and apply for a building permit and the zoning process would take off from there. That is no longer the case. We have 2 separate departments and zoning applications are filed in the Zoning Department. A sign permit is one of those zoning permits, but there was still an anachronism in our definition section that referred to a sign permit as a building permit rather than as a zoning permit, so we are making that change to drag it along with the rest of our zoning permits.

Immediately following that, you have a definition of spirits, but we don't mean the kind that you find this time of year around cemeteries. We mean the liquor variety and, once again, we no longer need that definition.

And now we come to the second part of Todd's explanation that involves math.

Mr. Dumais: This is just a graphic example of 3 things; the concept of story and how we calculate and define and measure story. What we're proposing are 2 changes to the definition of story. One is an elimination of a clause that's at the end of our existing definition that says essentially if you use a basement for any purpose, residential or business other than a janitor or a watchman accounts as a full story, so for those council members who have a finished basement or a laundry room, or anyone in West Hartford that has such a scenario, under this interpretation of our definition, that counts as a full story, so there is probably numerous examples of homes throughout West Hartford that would exceed the total story count without actually changing the height of the building.

The second part of our change to this definition is to define something that historically my office has always regulated, which is a half story. This is another example of if you go to our permitted table of uses and bulk controls, we regulate half story. There's a half story, 2-1/2 story requirement in almost all single family residential districts. However, we don't define the term half story. So what we've done was introduced a definition that is consistent with that handout on the back 2 pages. Both of those little graphics are hanging up in the Zoning and Planning office downstairs. They have been there for years and this definition tracks that language and how a half story is calculated and regulated.

Mr. Alair: And, actually if I could follow up on both of those changes very briefly. The change to eliminate basements, if you will, from being counted as a story simply by virtue of them being partially finished or used, you have to remember that story is intended to be a control on height. As such, what's below ground really doesn't matter.

Mr. Dumais: If I could add on that, the colored sheet with a very fancy drawing on the top of the handout shows that example and the bottom 2 diagrams of a home there's an example on the left of a 2-1/2 story

house with a basement that's completely below grade. On the other side, there is an example of a house that would have a "walkout basement." There is a calculation that's defined in the definition of story and building height that defines at what point we count that as a story, so we're not proposing to change that because that's still a measure of how big or how tall the house appears. We're not proposing to change that, we're just proposing to change the other half of that definition of if you're using a basement it shouldn't count as a story if it's completely below grade.

Mr. Alair: And with respect to the definition of half story, for many years we would and, in fact, the sketch that Todd provided you is derived from the definition of half story that was in the state building code, and this was one of those cases where we didn't have a definition, but we'd point to state law and say, we're going to interpret it in conjunction with the state building code. Much to our surprise, the state did away with the definition of half story, so we have to have one to put back what the state took out. I think that's it on that one. And, to go out on a whimper rather than a blast or a high note, the definition of wine, wine, excuse me, not whine, the definition of wine. Once again, one of those alcohol definitions that we can get rid of. So with that, if you have any questions. Oh, did I miss one? Street? Street is the other definition that uses that cumbersome phrase, "serving not more than 2 contiguous lots," that's redundant and unnecessary, so we're removing the phrase from that definition.

President Slifka: Thank you guys. Todd, I think this is your first appearance.

Mr. Dumais: It is.

President Slifka: Here is it not?

Background: Welcome.

President Slifka: Welcome.

Mr. Dumais: Thank you.

President Slifka: Are there any questions? Go ahead, Mrs. Hall.

Councilor Hall: Thank you. That was a really complete explanation. One of the areas you didn't touch on was amusement device and I'm just thinking as it relates to the state's Keno, whether somebody coming into a restaurant or bar and playing Keno, would that fall under amusement device and if we were to look at any future ordinances around Keno, would that be something that would be applicable?

Mr. Alair: I was recently asked that question and my first glance at it, I believe it probably would. What I want to make sure is that there's nothing very narrow or specific in the statute authorizing Keno that either excludes it or exempts it from local ordinances, or somehow defines it in a way that's inconsistent. But, my first blush glance at it is that a Keno machine that would sit on a bar top or something like that does appear to be an amusement device within the broad definition in our ordinance.

Councilor Hall: And then just one more follow up on a different note. The story calculation, would that have any effect on tax assessments or property assessments? Or this is more of a building code thing and it would not change.

Mr. Dumais: It's more, it's, yeah, it wouldn't have any effect, it's more of a building and zoning code consistency interpretation.

Mr. Alair: If your question is by changing this definition are we changing the implications for any existing houses, the answer is no. We have never considered those houses to be nonconforming, even

though a liberal, or excuse me, a literal interpretation of our ordinances might say otherwise, we have treated them as zoning compliant. We are changing the definition to clearly make them zoning compliant, so that has no impact on how we would value them.

President Slifka: Any other questions? Mrs. Kindall?

Councilor Kindall: Pat, there's 2 places where this "serving not more than 2 contiguous lots" is used. What was the purpose of the language?

Mr. Alair: Since I wrote the ordinance....

Councilor Kindall: Well then you should know.

Mr. Alair: ...20 years ago, 20-plus years ago, the purpose at the time was, that was when we added the definition of driveway to the ordinances, if I'm recalling it correctly, and as I was writing it, rather than relying on the definition, I added it so that people, as they read through these sections, would basically understand that a driveway serves not more than 2 contiguous lots. It was perfectly clear to me, but as it has turned out over the years, every time somebody reads it, their eyes roll back in their head. It just doesn't add anything that's not already in the definition of driveway. You know, it boils down to lawyer belt and suspenders.

Councilor Kindall: Okay, thank you.

President Slifka: Thank you. Mr. Doar.

Councilor Doar: Just going back to your first section A and just to make sure I get this right, and for the benefit of the public. You've deleted words wine, beer, spirits because they're defined in other statutes in Connecticut.

Mr. Alair: Right.

Councilor Doar: Is that then to say every other definition in here does not have a clear definition in Connecticut, for instance....

Mr. Alair: No. That's actually a very good question. Let me answer it with 2 different examples. First of all, there may be terms that are defined in state law, but for a purpose that is so different from ours that we want our own definition and for the life of me I can't think of one right now.

Councilor Doar: Well, I'll give you one example. I was just thinking about that; like golf course restaurant.

Mr. Alair: There is probably no definition in state law of a golf course restaurant, but we defined it very specifically because in West Hartford we obviously have one, it's ours, and it is located in a residential zone. So, when we created it we specifically put that in a provision so that we can have one in a residential zone. A good example of a case where the state statute definitions are a bit problematic is in the state statute definition of hotel. There are actually 2 of them. One is the definition of hotel for purposes of the state use and occupancy tax and the other is the definition of a hotel for purposes of obtaining a hotel liquor permit. The only place where we might want to rely on that, those state definitions is in our ordinance regarding liquor permits. We don't have a hotel liquor permit at the present time, though we will be drafting an ordinance and submitting it to you to authorize such a permit and that ordinance will refer to hotel permits as authorized by state law, so it will specifically refer back

to that statute. But for zoning purposes, our purpose is what we want in a hotel has other criteria that the state couldn't care less about when they regulate a hotel liquor permit. So, there are times when we want the ability to create a different definition and that is certainly available to us. We can always, if we find a problem with the prevailing definition in state law, we can always add a definition of our own. If we find a problem where there are 2 statutory definitions out there, we can pick one and add it, or use the one, interpret our ordinance is consistent with the one that's most closely aligned with the purpose of our ordinance. So, we've got the flexibility to add a definition where we need it if we find a problem with those in existing state law.

Councilor Doar: To me, the inverse is true. If 6 months from now you were looking through this again, working on it, and you saw that the definition of adjacent and at the state level satisfies the way our town is dealing with that word, you'd come back to this council a year from now and say I want to amend the ordinance and drop the word adjacent out.

Mr. Alair: Sure. I probably wouldn't do it 6 months from now or come back to you with 1 change in a 13-page ordinance like that. We'd save them up like we did this time around, but yes, your point is taken.

Councilor Doar: Thank you very much.

President Slifka: Thank you, Mr. Doar. Are there other questions? Mr. Alair, I mean this somewhat in jest because I imagine it doesn't come up that often, but also just thought I'd ask for the record. Home for the aged, it's supposed to serve people over the age of 60 years? I imagine there are many who would take offense to that definition, but there had to be a reason why that number was picked and I know you said this was written decades ago, but when people weren't perhaps living as long. Is there a reason that does not get updated? Perhaps it's of no consequence, I don't know.

Mr. Alair: I, I, I honestly don't recall the last time anybody applied for a permit for a home for the aged, so I think it was, it's something we probably could delete. I wouldn't want to do that without actually studying it, but it's probably something we could've looked at, had we noticed it.

Mr. Dumais: It was added in 1971. We could pull the file and see in the context in which it was added.

President Slifka: It may not be the most urgent matter before your office, Mr. Dumais, but thank you for offering. Are there other questions? Oh, go ahead Mr. Captain.

Councilor Captain: Thank you, Mr. Mayor. Pat, the floor area ratio, I'm wondering what the driver is behind this change. I'm wondering about the potential of a hotel and is this change related to the hotel?

Mr. Dumais: It is not. There are a number of various development proposals that I have been involved with with developers in various degrees. This could benefit many of them. Currently, as you know, I've last seen a hotel, this wouldn't directly, you know the hotel wouldn't directly utilize this definition change. It's more of a conceptual idea to encourage future redevelopment within the center or around the center. It's also something that conserves our land resource so you're not parking on, you know, creating a parking lot on a field when it can be incorporated into a building or below a building, so it's kind of carrot and stick. You know, if we hang it out there we'd want good development and this is a form of good development if we control it right.

Mr. Alair: Just perhaps to sort of explain it at a very basic level for those people who don't understand the idea of floor area ratio, if your floor area ratio was 4, it means that the area of your lot x4 is the maximum floor area you can have of your building.

