

## MEETING OF THE LAND USE COMMITTEE 11-14-2011

The meeting convened at 7 pm in the Town Hall. Present were Dedun Ingram (chair), Craig Brooks, Tom Collins, Kathy Flaxman, Lees Hartman, and Linna Barnes (Council liaison). No members of the public were present.

Minutes of the October meeting were approved with minor changes to punctuation.

**Review of FAR effects** - Linna distributed two items provided by Town staff: one included data on houses constructed in the Town after the adoption of new setback requirements but before the FAR regulations, and a second showing figures on houses built or added to (any construction that required a pre-PAC meeting) since the FAR regulations were adopted. Linna will request the addition of permit dates for all projects and some additional statistics for the post-FAR projects. The committee will use these as a basis for assessing the effects of the most recent building regulations.

**Public hearing on new building code regulations** - Dedun reported on the Town's public hearing on the proposed building code changes. Dedun, Tom and Tom's wife were the only attendees. The Council discussed some issues that have recently arisen that involve safety railings. The Council decided to remove the proposed safety railing regulation from the package and requested that the Committee re-think it. The rest of the proposed building code changes were passed, with a slight modification to the language regarding replacement of air conditioning units ("not larger" than the unit replaced was clarified to mean "not extending farther into the setback").

**Safety railing issues** – The proposed building code regulations included one that permitted construction of a safety railing by right when such a railing was required by the County. The County currently requires that a safety railing be installed when a new retaining wall above a certain height is built; safety railings are not required to be retroactively installed on existing retaining walls. The intent of the proposed regulation on safety railings was to state the specifications of the safety railing (height, length, fenestration, etc.) and thereby close a possible loophole in the Town's front yard fence regulation. The proposed regulation stipulated that a safety railing was to have the minimum height and length required (only along the section of the retaining wall with a height at or above the stipulated height) and of open construction. Further, the intent was that such safety railings be installed by right only when required by the County on new retaining walls, not on existing walls. A recent installation of a safety railing in a front yard (prior to the public hearing on the proposed safety railing regulation) was brought to the council's attention. The newly installed safety railing brought to light some flaws in the proposed safety railing regulation. Thus, after discussion by the council at the public hearing, the safety railing regulation was struck from the proposed code changes and sent back to the Committee for further consideration.

The newly installed safety railing in question was installed atop old front-yard retaining walls on three sides of the front yard (thus, the railing encloses the entire front yard). The safety railing also outlined a set of steps and included a gate. The railing meets the

open fenestration criteria of the proposed regulation, but may not meet the requirement that it only be installed above portions of retaining walls that are over the height specified in county regulations (the gate and part of the railing along the stairs definitely are not in accordance with the proposed regulation), and may not have been set back from the wall as required in the proposed regulation. The new “safety railing” looks like and functions as a front yard fence and the Town prohibits front yard fences. Installation of a front yard fence is allowed only if a variance is obtained and in such cases, neighbors are advised of the plans and given the opportunity to comment. Neighbors in this case were not informed and did not have the opportunity to comment prior to installation of the “railing”. The installation of this safety railing (premature as it was) showed that adoption of the proposed safety railing regulation would open a gaping loophole in the Town’s front yard fence regulation.

The Committee began further consideration of safety railings for retaining walls. Points being considered:

- 1) If a retaining wall is new and above a certain height, a safety railing is required by the County. Does the Town need to have any regulations about this at all? Should the Town allow such a railing to be installed by right or should it require a variance for the installation (administrative or full)? The Committee concurred that regulation of safety railings on new retaining walls is necessary in order to control compliance with our specifications – limit height, length, require openness, etc..
- 2) If the retaining wall already exists, there is no County requirement to install a safety railing. Should the Town allow installation of safety railings on existing retaining walls? The Committee concurred that if they are allowed on new walls, it would be unfair not to allow them on existing walls. Should they be allowed by right or with a variance? And if with a variance, is a full variance before the Council needed or is an administrative variance sufficient? The committee felt that requiring a variance, which would provide for notification of neighbors, was appropriate. Whether it should be a full variance or an administrative variance needs further discussion.
- 3) For any safety railing, should we require a survey? There appears to be no such requirement for a fence. Further, because a safety railing is secondary to a retaining wall, a survey for the railing seems unnecessary.

Noting details of the particular installation that raised the issue, members suggested that a gate in a safety railing was inappropriate and that there should not be a railing along portions of the wall that were not high enough to trigger the requirement. There was also discussion of whether the required setback between the top of the wall and the railing, should be greater than the 6 inches in the current proposed regulation. Members were asked to look at the railing under discussion, and to think about reasonable requirements and process. Dedun will send out further materials for the Committee to review prior to the December meeting.

**Rear retaining walls** - Another retaining wall issue was raised by an application for retaining walls designed to raise/level a steeply-sloped back yard. A pair of retaining

walls with a combined height of 9 feet is proposed. The walls will be located along the side and rear property lines. The Committee discussed the possible effects on side and rear neighbors, as well as the impact of installing such walls on trees in the affected yard and in neighboring yards. For the property in question, the plat provided showed at least one large tree in an area that would be raised/filled by several feet. The permit for the walls has not yet been issued so Linna will call Todd to ask about trees in case the proposal should be taken before the Tree Board. The Committee will consider whether to propose regulations to limit construction of retaining walls in the rear yard: 1) should retaining walls with a cumulative height of more than 6' 6" be allowed? 2) if so, should the distance between them be regulated and how close to the property line should they be permitted? 3) are controls in place currently to protect trees? Dedun will send out further materials prior to the December meeting.

**Development issues and proposed new County zoning regulations:** Linna spoke with David Podolsky who says that the Town does not have zoning authority to regulate duplexes (dividing of a house into two residences). The Town may be able to devise regulations to block construction of tandem houses (a house built behind another on the same lot). Construction of tandem housing is easier to regulate because the Town can impose rear setback limits. Neither duplexes nor tandem housing was included in the most recent County zoning proposal, but both remain as future possibilities. Mr. Podolsky was interested in the point that the Committee had raised about the County's proposal to permit apartments in a single-family house and in an accessory structure, but to limit these residences on a "first-built" basis; he thought that this would not stand up to legal scrutiny. Pat Burda and Meredith Wellington were also consulted and thought that some of the County's proposed changes would not go forward, but that combining R-40 and R-60 zoning into a single category probably would.

Dedun noted that Takoma Park regulates and monitors allowed apartments through licensing and asked if we could do that as well. Linna thought probably not because we operate under a different authority (Capital Area Parks and Planning), but this can be checked.

**Free-standing decks** – The Committee briefly discussed yet another back yard issue. When a deck is attached to the house, it may encroach into the rear setback for a house. If it is free-standing it appears that there are no regulations about how close to the rear or side lot lines it may be located. At least one house in the Town which was built out to the rear lot line, now wishes to build a deck and is proposing to build one that is unattached to the house. Clearly, construction of a deck (as opposed to a ground-level patio) that encroaches into the rear or side setbacks violates the spirit of the Town setbacks. Linna will ask the Council if they want the Committee to consider this issue. The meeting adjourned at 9 pm.