

## PUBLIC HEARING

September 9, 2015

At 8:20 p.m. Supervisor Schiliro stated that a Public Hearing would be held in accordance with the Public Notice that follows:

NOTICE IS HEREBY GIVEN THAT the North Castle Town Board will hold a Public Hearing on September 9, 2015, at 7:30 PM, or as soon thereafter, at Town Hall, 15 Bedford Road, Armonk, NY, 10504, for the purpose of considering a local law to amend Chapter 213, Zoning, of the Code of the Town of North Castle, including: Amendments to Section 213-14G(1) relating to the height of a necessary retaining wall; Section 213-22 to include a modification to the front yard setback in the RB Roadside Business Zoning District; and to create a new Section 213.35.2 to establish standards for Site Development Plans.

The local law is available in the Town Clerk's office during regular business hours and on the Town website [www.northcastleny.com](http://www.northcastleny.com). ALL PERSONS HAVING AN INTEREST IN THE MATTER ARE INVITED TO ATTEND AND BE HEARD.

By Order of the Town Board  
Anne Curran, Town Clerk

Dated: August 28, 2015  
Armonk, NY

The Public Notice was marked Exhibit "A" for the record.

The Affidavit of Posting calling the Public Hearing was marked Exhibit "B" for the record.

The Affidavit of Publication from The Journal News calling the Public Hearing was marked Exhibit "C" for the record.

Two letters from Director of Planning, Adam Kaufman, dated August 4, 2015 with Planning Board recommendations to Zoning Chapter and positive recommendation to adopt Chapter as revised were marked Exhibit "D" for the record.

Letter from Westchester County Planning Board dated August 17, 2015 stating that the matter is for local determination was marked Exhibit "E" for the record.

Petition with signatures submitted by Kenneth Kauffman received September 9, 2015.

Letter from Donald Ahrenberg with supporting signatures received September 9, 2015.

Email from John Junker dated September 9, 2015.

Full Environmental Assessment Form, Parts 1 and 2.

Negative Declaration for consideration.

Proposed Local Law.

Director of Planning Adam Kaufman reviewed the various sections of proposed changes to the Zoning chapter, including Section 213-3 to amend existing definitions and include new definitions for wall and retaining wall, and Section 213-14.G entitled Walls and fences. Mr. Kaufman said that the Zoning Board of Appeals (ZBA) interpreted Section 213-14.G.(1) of Town Code as it currently exists to prohibit the construction of any retaining wall over six feet in height. Prior to the interpretation by the ZBA walls and fences were limited to six feet in height, and retaining walls did not have a maximum permitted height and were reviewed by the Planning Board or Residential Project Review Committee (RPRC). Mr. Kaufman noted that many North White Plains residents submitted a petition indicating that they want the ZBA interpretation to remain.

Councilman DiGiacinto said the way the Code reads now it states that walls and fences cannot exceed six feet in height, with the exception of deer fencing which can be eight feet. Ms. DiGiacinto said she did not interpret this as pertaining to retaining walls. Mr. Kaufman said the ZBA discussed

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this issue and said that it does pertain. Ms. DiGiacinto said she thought the Code would have clearly stated that fences and walls, as well as retaining walls cannot exceed six feet, and when interpreting the current Code she did not see that retaining walls would have been restricted to six feet. She said she viewed a retaining wall as totally different from a wall, which people build for aesthetic reasons or to show property boundaries; a retaining wall is not decorative; it is a necessity to prevent erosion and hold back soil.

Director of Planning Kaufman said the Planning Board had very similar comments to Councilman DiGiacinto's. Mr. Kaufman said the Planning Board felt it was not necessarily appropriate to limit the height of a retaining wall to six feet, and suggested that it take a look at retaining walls because there can be potential for negative impacts depending on their location in relationship to adjacent structures and other properties. The proposed change to the law would allow retaining walls over six feet if they are approved by the Planning Board, as per the Planning Board's recommendation back to the Town Board. He noted that in correspondence for the hearing, significant comments were received from residents of North White Plains requesting the Town not adopt any revisions to this section of the Code and allow the ZBA's interpretation to remain.

Director Kaufman reviewed potential alternatives to address the issue of retaining walls. Mr. Kaufman said the suggestion of Town Attorney Roland Baroni was to require a special use permit from the Town Board for any retaining wall in excess of six feet in the R-5, (5,000 square feet parcel, about 1/8 acre), R-10 (10,000 square feet parcel, about 1/4 acre) and R-2F (5,000 square feet, two-family parcel) Zoning Districts which would cover all residential zoning districts in North White Plains. Mr. Kaufman noted that coming to the Town Board for a special use permit may be cumbersome requiring placement on a Town Board agenda and having a public hearing. He said the Town Board has to decide which board is most well equipped to address this issue.

Director Kaufman said some concerns were expressed that a retaining wall could be located close to a property line. Mr. Kaufman said another alternative to regulate this would be to prohibit retaining walls over six feet in any regulated setback in order to provide additional protection, either in any district or in specific districts, as determined by the Town Board.

In response to a query from Supervisor Schiliro as to which Board would review retaining walls in excess of six feet, Mr. Kaufman said it could be either the Town Board or Planning Board depending on which one the Town Board thinks is appropriate.

Donald Ahrenberg, North White Plains, provided his understanding that the law does not currently prohibit building a wall over six feet; but that it says applicants have to go through the process to have it approved. He said the process is there for a reason to protect homeowners from neighbors building unsightly structures that would affect the character of their neighborhoods; and the law should be left as it is to require property owners to go through the approval process.

Director Kaufman clarified that the ZBA interpreted this section of the law to say walls cannot be in excess of six feet.

In response to Adam Kaufman's comment, Kenneth Kauffman, North White Plains, said that walls cannot be over six feet, but applicants can apply for a variance or walls can be stepped. Kenneth Kauffman cited codes of other Westchester municipalities; and he said many require a variance from the ZBA for walls in excess of certain heights. Kenneth Kauffman said the requirement is standard in other towns; and North Castle's Code should remain as currently written to require a variance from the ZBA as this adds a layer of protection for homeowners. In response to Kenneth Kaufmann's query if there have been numerous applicants who were not able to build walls since the ZBA's interpretation, Director Kaufman said there are a number of applications where walls are prohibited because they exceed six feet. In reference to Kenneth Kauffman's comment regarding obtaining a variance from the ZBA, Director Kaufman said the characterization that applicants can get a variance is not correct. Director Kaufman clarified that the Code currently prohibits any wall over six feet; he noted that while the ZBA provides an escape valve, the requirements for a variance are more difficult than for obtaining a special use permit. Director Kaufman added if the Town Board feels there are there are certain circumstances where a wall can exceed the permitted height, a variance is not the right way to approach this.

Kenneth Kauffman asked the Board to understand what is necessary versus what is a luxury, such as additional parking or a swimming pool. He said people are overloading smaller homes in North

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White Plains which is bringing down property values. Councilman Mezzancello commented that many towns are facing issues with residential parking.

In response to Councilman D'Angelo's query if anyone is currently precluded from going to the ZBA and requesting a variance, Town Attorney Baroni said an applicant would not be precluded, but would have to meet standards and the approval is not automatic.

In response to queries from Anthony Patti, North White Plains, Director Kaufman again confirmed again that currently walls in excess of six feet are not permitted and any exceptions would require a variance by the ZBA. The proposed change in the law would return review of retaining walls in excess of six feet to the Planning Board. Mr. Patti said that the review of projects by the Planning Board has worked well for many years; and there has been no restriction on necessary retaining walls. With regard to his project being referenced, he said the additional parking approved by the Planning Board would help eliminate congestion and reduce cars parked on the road by providing parking on his property. He said the Planning Board provides a check in the process. He said his project is not excessive and does not detract from the neighborhood, or the Planning Board would not have approved it. He said requiring applicants to go to the ZBA would involve another step in the process, be more time consuming and expensive for applicants, as well as place additional burden on the ZBA. He recommended that the Town Board return the approval authority for any necessary retaining wall to the Planning Board.

Kenneth Kaufmann and Donald Ahrenberg expressed their objections to Mr. Patti's project including the height of the retaining wall and number of the parking spaces as approved by the Planning Board.

Supervisor Schiliro said that it is difficult to determine what is 'necessary' versus what is it a luxury with regard to individual circumstances of property owners. Director Kaufman said that the Town has interpreted "as necessary" to mean what is necessary to accomplish the project. He said the word 'necessary' could be removed from the proposed law.

In response to Kenneth Kauffman's query as to why language in Section 213-14.G.(1) of the proposed law regarding reviews 'by the Building Inspector and RPRC' was replaced with 'by the Town', Director Kaufman said the proposed language simplifies that reviews can be done by the applicable Town entity including the Town Engineer, Building Inspector, and RPRC .

Anthony Futia, North White Plains, said that the issue belongs before the ZBA.

Mr. Baroni said the issue is not the Patti project; the Town Board is considering a process which would potentially affect every resident. He suggested that different standards are needed for different districts and in more dense districts some additional standards probably are preferable. Mr. Baroni said the added layer of a special use permit administered by the Town Board, with the development of standards, would provide for an administrative decision by the Board. The applicant would be required to meet the standards, such as minimum landscaping or requirement for side of a wall facing a neighbor to be faced in fieldstone or brick to make it more attractive, to receive approval. In response to a query from Councilman DiGiacinto, Mr. Baroni noted that Adam Kaufman would develop the standards which the Board would adopt as part of the Code. It was noted that a decision by the Town Board that the applicant did not meet the standards could be appealed, as is the case with the decision of any board.

Mr. Patti added that the review of his project by the Planning Board was not rushed, was very thorough, required a public hearing, and was subject to conditions including stuccoing of walls and plantings.

Donald Ahrenberg and Kenneth Kauffman said they thought the alternative for a special use permit from the Town Board would provide an extra layer of review.

With regard to comments from Anthony Futia regarding the NYS Supreme Court decision concerning Mr. Patti's project, Mr. Baroni said that the only reason the matter was sent to the ZBA was that the judge determined the time period to appeal to the ZBA had not expired. The ZBA made the interpretation which is now the law of the Town unless it is amended. In response to a Kenneth Kauffman's query whether the Supreme Court standards are the same for decisions by any board, including a special use permit, Mr. Baroni confirmed that they are. In response to a query from Councilman D'Angelo, Mr. Baroni said if the Board were to adopt the proposed change the

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opponents would need to go back to court if they wanted to contest it because the approval of Mr. Patti's project would have already been granted. Kenneth Kauffman said any action by the opponents would be frivolous as the Planning Board would be operating under the purview of the law.

Councilmen DiGiacinto, Reiter and D'Angelo said they preferred the alternative of requiring special use approval from the Town Board for any retaining walls over six feet in height in the R-5, R-10 and R-2F Zoning Districts. Councilman Mezzancello said a great deal of time was spent by the Planning Board on the review of Mr. Patti's project; and he did not think another layer of approval for retaining walls was necessary, and perhaps additional requirements could be added by the Planning Board to give residents additional protection.

In response to query from Ed Lobermann, North White Plains, Mr. Baroni said that under the proposed scenario for a special use permit requirement for R-5, R-10 and R-2F zoning districts, a property in another zoning district could have a retaining wall in excess of six feet, subject to approval of the Planning Board.

Supervisor Schiliro said he wanted to keep the public hearing open and review proposed alternatives with the Town Attorney and Director of Planning. Mr. Schiliro said the Board would try to reconvene the hearing at the next meeting.

After all persons were heard who desired to be heard, Councilman Reiter moved, seconded by Councilman D'Angelo, that the Public Hearing be adjourned at 9:45 p.m.

The roll call vote was as follows:

Ayes: Councilmen D'Angelo, DiGiacinto, Reiter, Mezzancello, Supervisor Schiliro

Noes: None

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Anne Curran, Town Clerk

Dated: September 21, 2015