

TOWN OF WASHINGTON

Bryan Memorial Town Hall

Post Office Box 383

Washington Depot, Connecticut 06794

Zoning Commission Regular Meeting

MINUTES

April 26, 2021

7:30 P.M. – Meeting Via Zoom Conference

MEMBERS PRESENT: Chairman Solley, Mr. Reich, Ms. Hill, Ms. Radosevich, Mr. Werkhoven

ALTERNATES PRESENT: Ms. Smith, Ms. Fernandez-O'Toole

ALTERNATES ABSENT: Mr. Sivick

STAFF PRESENT: Ms. White, Ms. Rill, Mr. Tsacoyannis

PUBLIC PRESENT: First Selectman Brinton, Ms. Branson, Ms. Anderson, Ms. Averill, Mr. Talbot, Ms. Ayer, Ms. Van Tartwijk, Ms. Gorra, Mr. Anderson, Ms. Larson, Mr. Hileman, Ms. Rebillard, Mr. Barnet, Mr. Connor, Ms. Solomon, Mr. Berner, Ms. Lodsins, Ms. Ryder, Mr. Kelly, Ms. Murphy

The meeting was called to Order at 7:33pm.

Chairman Solley, Ms. Hill, Mr. Reich, Mr. Werkhoven and Ms. Radosevich were seated for the Regular Meeting.

CONSIDERATION OF THE MINUTES:

MOTION: To approve the March 22, 2021 Meeting Minutes as submitted, by Ms. Hill, seconded by Mr. Reich, passed 5-0 vote.

PENDING APPLICATIONS:

There are no Pending Applications.

NEW APPLICATIONS:

There are no New Applications.

OTHER BUSINESS:

Discussion with First Selectman Jim Brinton Regarding an Executive Session Meeting that took place in 2020 (3min 55sec.):

Chairman Solley welcomed First Selectman Brinton to the meeting and asked him if he could brief the Commission regarding an Executive Session held in 2020.

First Selectman Brinton stated that he had been an Executive Session in December of 2020 regarding a real estate and personnel matter. The Chairmen of the Zoning Commission, Zoning Board of Appeals and Inland Wetlands Commission were all asked to attend. Because the meeting was held under Executive Session, First Selectman Brinton explained that he, as well as the Chairmen of above listed Commissions, could not discuss all of the details of the meeting, however, Mr. Brinton explained that the issues pertaining to the meeting were resolved.

Mr. Werkhoven questioned the reason for the Executive Session. Mr. Brinton stated that it was due to a Real Estate matter as well as a personnel issue.

Mr. Reich stated that it was his understanding that an Executive Session could not take place unless there was a meeting that was already in progress, and that meeting had been posted and Noticed for the Public. He explained that he did not understand how the meeting took place, and was displeased that the entire Zoning Commission was not involved. Mr. Werkhoven agreed.

Ms. Radosevich stated that she was disappointed that Zoning Commission matters were discussed without the entire Commission being there. She stated that she understood the Session was regarding 57 Flirtation Avenue and felt that if the Commission is expected to make a decision regarding this property, that all of the information that was discussed at this private meeting should be shared with the Commissioners.

Mr. Brinton stated that he would seek the advice of legal counsel regarding what could and could not be discussed with the entire Commission regarding the Executive Session.

Mr. Reich asked for clarification regarding if the Executive Session took place after a Regular Meeting or not. Mr. Brinton said that the Session took place during a Board of Selectman's meeting. That meeting, and the Executive Session were both noticed to the public and posted on the town's website.

Chairman Solley stated that he would like to move on, and thanked Mr. Brinton for joining the Commission this evening.

Discussion Regarding Further Revisions to Zoning Regulations Section 12.8 – Temporary Uses - Including Attorney Zizka's Review, dated March 22, 2021 (13 min. 15 sec.):

Chairman Solley stated that he would like Ms. Hill to go over her drafted suggestions as well as Attorney Zizka's response. Ms. Hill read over the following draft to the Commissioners for their suggestions:

"Second draft in response to comments by Atty. Zizka – April 2021

1. Temporary Dwelling Units for Seasonal Farm Workers:

Issues:

a) The revision should keep in mind that a single farm may raise crops with different planting and/or harvest times meaning there could be several times per year when seasonal help is needed.

b) Does the Zoning Commission think this use should require a permit for each planting/harvest time when temporary housing will be used, one general permit for the

entire calendar year to include all planting/harvest periods, but not to exceed 6 weeks in any calendar year, or no permit required as long as the farm is already permitted?

* The Commission felt that one permit per trailer/temporary dwelling was sufficient.

c) Is that 6-week limitation workable/reasonable?

*The Commission stated that a two-week extension could be applied for.

d) What about a requirement for the removal of the trailer/RV from the property when not in use? (Don't want them sitting on a site for extended periods between harvest seasons).

- The Commission felt that the trailers should be removed.

e) Is there a maximum number of trailers that should be permitted?

- The Commission felt that two trailers worked best.

f) Can Atty. Zizka think of any other issues to address or improvements to my first draft below?

Proposed:

2.3.2.c - Mobile homes or mobile home parks **EXCEPT AS MAY BE ALLOWED UNDER SECTION 12.8**

12.8.2 -Temporary Trailers **OR SIMILAR VEHICLES** for Living Purposes.

A. A permit, not to exceed four weeks in any calendar year, may be issued by the Zoning Enforcement Officer for one visiting trailer **OR SIMILAR VEHICLE** to be used for living purposes on a lot zoned for residential use. Any such trailer **OR SIMILAR VEHICLE** must be parked on the rear half of the lot and must be located at least 25 feet away from every lot line. No more than one such permit may be issued in any calendar year.

* The Commission agreed with this.

B. A PERMIT, NOT TO EXCEED SIX WEEKS IN ANY CALENDAR YEAR, MAY BE ISSUED BY THE ZONING ENFORCEMENT OFFICER FOR NO MORE THAN ____ TRAILERS OR SIMILAR VEHICLES TO BE USED BY SEASONAL AGRICULTURAL WORKERS FOR LIVING PURPOSES ON AN APPROVED FARM OR FOR MORE THAN ____ SUCH VEHICLES, THE COMMISSION MAY APPROVE A SPECIAL PERMIT. ANY SUCH TRAILER OR SIMILAR VEHICLE MUST BE PARKED ON THE REAR HALF OF THE LOT AND MUST BE LOCATED AT LEAST 50 FEET FROM EVERY LOT LINE. THE SIX WEEK USE LIMITATION MAY BE FOR ONE SIX WEEK PERIOD OR FOR SEVERAL SHORTER TIME PERIODS TOTALING NO MORE THAN SIX WEEKS, BUT THE VEHICLE(S) MUST BE IMMEDIATELY

REMOVED FROM THE PROPERTY WHEN NOT IN USE. NO SUCH TRAILER OR SIMILAR VEHICLE MAY BE USED UNLESS ALL OTHER REQUIRED APPROVALS, INCLUDING BUT NOT LIMITED TO ANY APPROVALS FOR WATER SUPPLY AND SANITATION, HAVE BEEN OBTAINED.

* Mr. Reich stated that he did not know enough about the trailers, or the necessity of them, to make decisions regarding them. Chairman Solley suggested that the Commission reach out to local farms for their ideas and suggestions. Ms. Hill stated that she would re-work the draft, send it to Ms. White, Land Use Administrator, who then could send it to local farms.

2. Addressing the problem that the Lake Waramaug Country Club and Washington Club often rent out their properties for parties, weddings, etc. that aren't necessarily customary and incidental uses and the Zoning Commission does not want to require them to get a permit every time they do so

Issue:

Per Atty. Zizka's advice, club rentals may be considered customary and incidental uses and so the proposed revision below would not be necessary. Question: How can the Commission ensure that future commissioners and staff will agree with this interpretation and act accordingly?

Proposed:

12.8.3.D - TEMPORARY EVENTS ON PROPERTY PRINCIPALLY USED FOR LAKE WARAMAUG COUNTRY CLUB OR WASHINGTON CLUB PURPOSES."

Discussion Regarding Washington's Affordable Housing Plan (35min. 54sec.):

Jocelyn Ayer from the Northwest Hills Council of Governments stated that she was facilitating Washington with their Housing Plan. Ms. Ayer explained that there is currently a Housing Steering Committee that meets once a month and they have been brainstorming ideas for the plan, such as multi-family housing.

Ms. Ayer mentioned that Mr. Hileman, Chairman of the Washington Planning Commission, had suggested an overlay zone, which would focus on the town's existing village centers and commercial areas/business district.

Mr. Reich stated that he was concerned over reports in the newspaper that the State of Connecticut would like percentages of affordable housing in smaller towns to be much larger.

Ms. Ayer explained that the State of Connecticut was encouraging the Housing Plans so that smaller towns such as Washington could give a realistic view of what their housing needs are and how to achieve them.

Ms. Ayer stated that the next Community Forum would be held on June 3, 2021 at 7:00pm via Zoom.

Chairman Solley thanked Ms. Ayer for her time.

Discussion Regarding Dock Regulations for Lake Waramaug – Boats per Dock (1hr. 01min. 55sec.):

Mr. Berner, representing the Lake Waramaug Authority, stated that there was a loophole in Zoning Regulation Section 6.6.2, which states that docks shall only be for the private, noncommercial use of the resident only but does not mention moorings. Mr. Berner explained that the regulations only address the issue of docks, floats and rowing docks, not boats themselves. Because of this, the issue of renting out the moorings has become relevant. Mr. Berner stated that he has asked Attorney Zizka to help draft a correction to the Zoning Regulations, but he could not do so without the consent of the Zoning Commission due to conflict of interest. Mr. Berner added that any charges that are incurred by Attorney Zizka, the Lake Waramaug Authority would pay for them.

The Commission agreed to allow Attorney Zizka to draft the correction for their consideration.

ENFORCEMENT (1hr. 08min. 55sec.):

101 Wykeham Road Response from Counsel:

Mr. Tsacoyannis explained that Attorney Zizka had responded to the Commission's questions regarding the use of an access road owned by 101 Wykeham Road to cut and remove trees located at 23 Bell Hill Road. In 2013, the owners of 101 Wykeham Road signed a Settlement Agreement with their neighbors stating that the access road would be abandoned.

Ms. Hill entered the following statement for the record:

"I have thought a great deal about Atty. Zizka's 4/7/2021 letter regarding 101 Wykeham Road, the abandonment of the Bell Hill access, and the 2013 Settlement Agreement and would like to comment.

First: In my opinion, I don't think it is correct to argue that the Zoning Commission required or forced the property owner to give up a property right (that right being the use of the Bell Hill access) as a condition of approval. The property owner and its representatives, the engineer and attorney, were the ones who presented the Settlement Agreement to the Commission at its January 2013 special meeting and who spoke in favor of its approval. The Commission had not even had the opportunity to read or review the proposed Agreement, which was presented already including the Bell Hill access condition, prior to the meeting and certainly the Commission did not add that condition to the Agreement during the meeting. The property owner and its engineer were present at the meeting and had every opportunity to raise objections, but did not, and in fact, the property owner's attorney was also present, urged approval, and made no objection to the proposed language or to any of the conditions.

Second: If there should ever come a time when the property owner decides not to build an inn and in fact, has some other plan for development of the property, I can't imagine that there wouldn't be some legal way to end the Agreement; possibly a legal way for the property owner to give up or refuse the Zoning approval and/or go back to court with all of the involved parties to have it voided or nullified.

Third: The Settlement Agreement was not and is not some pie in the sky, generally vague idea that can be ignored at someone's whim. It is an exact document with specific language, which includes both the condition that the Bell Hill access is to be abandoned and the statement that the Agreement becomes, "...binding and legally valid if and when the property is approved for use as an inn by the Zoning Commission and the Connecticut Superior Court...." The Zoning Commission did approve the inn on January 7, 2013 and the Superior Court subsequently approved the Settlement Agreement in February 2013. Not only did the property owner and its representatives not object to the Bell Hill access condition, they proposed and then did not object to the specific language stating the Agreement would become effective when both the Commission and Court approved it.

So to me it is just common sense that since the Zoning Commission approved the Settlement Agreement with all of its specific provisions, the Court then approved it with the same specific provisions, and it still remains in effect today, it should be enforced. While I respect Atty. Zizka, I want to state for the record that I disagree with his April 7th opinion.

Janet M. Hill, Zoning Commissioner".

Chairman Solley stated that he could ask Attorney Zizka for further clarification as to why the Settlement Agreement is currently not binding.

57 Flirtation Avenue (1hr. 26min 45sec.):

Mr. Tsacoyannis stated that he had received the new lot line revisions for the property as well as the Zoning Permit Application for the single family dwelling. Mr. Tsacoyannis sent the information to the Commissioners for their review.

Chairman Solley encouraged the Commissioners to make an appointment with the Land Use Office to review the hard copies of the lot line revisions and Zoning Permit Application.

Mr. Tsacoyannis stated that he had reviewed the information and felt that the property owners met all of the requirements, but was pending approval based on the Zoning Commissions review. Ms. Hill questioned whether or not Attorney Zizka had reviewed the information. Mr. Tsacoyannis stated that he believed Attorney Zizka was sent the information via the property owners Attorney, James Kelly, but had not received any feedback so far.

Ms. Radosevich pointed out that the Zoning Regulations under 17.4.A stated that, “....no such nonconforming structure may be enlarged extended or otherwise altered in such a way as to increase the area, volume or percentage of the structure that is nonconforming or to create, increase, enlarge or extend any other nonconformity as to the structure or the lot”. Ms. Radosevich questioned if the property owner was adhering to this section. Mr. Tsacoyannis explained that they were due to the lot line revisions. The lot line revisions changed the status of the structure from nonconforming to conforming upon approval. Ms. Radosevich stated that she felt this set a precedent for future applicants, reasoning that the process was not done correctly or in order, while breaking numerous Zoning laws and was allowed to do so.

60 River Road (1hr. 38min.35sec.):

Mr. Tsacoyannis stated that the barn was almost complete, and that the current red barn on the property would eventually be demolished. Chairman Solley questioned what evidence there was that farming was taking place on the property. Mr. Tsacoyannis stated that the property owners had obtained State farming permits. Ms. Hill asked what was being farmed on the property. Mr. Tsacoyannis stated there were chickens on the property currently, but believed the plan was to eventually grow berries. The Commission requested that Mr. Tsacoyannis check with the property owner for more details.

289 Litchfield Turnpike (1hr. 44min 04sec.):

Mr. Tsacoyannis had received a complaint regarding numerous cars on the property, and reported that he has been going by the property once a week to monitor.

COMMUNICATIONS (1hr. 45min. 33sec.):

04-22-2021 Letter from M. Zizka to R. Fisher re: 182 East Shore Road:

The Commissioners had reviewed the letter from Attorney Zizka stating that he did not feel that the Commission nor the Enforcement Officer could issue any declaration regarding 182 East Shore Road.

Letter from Mr. and Mrs. Tagley Regarding Helicopter Landings on Sabbaday Lane:

Ms. Radosevich stated that she would research whether or not other towns had helicopter ordinances and what they consisted of. Ms. Hill stated that Jocelyn Ayer from the Northwest Hills Council of Governments could probably help answer this question.

PRIVILEGE OF THE FLOOR (1hr. 49min 28sec.):

The Land Use Office had received a letter from Peter Talbot earlier that day regarding The Community Table Restaurant on Litchfield Turnpike. Mr. Talbot explained that the owner of Community Table was looking to expand by adding a catering business as well as take out services that would be located next door. There is currently a home on this property that would be converted however, not enough lot coverage would hold the property owner back from going forward with his plan. Mr. Talbot explained that the other villages in Washington were allowed

up to 50% or more of lot coverage whereas Woodville was allowed far less. Mr. Talbot stated that he was looking for guidance with how to move forward with his client's request.

Chairman Solley stated that the process would take several months, however Ms. Hill stated that she would be willing to draft language for the revision.

ADMINISTRATIVE BUSINESS (2hr. 00min. 23sec.):

There was no Administrative Business for this evenings meeting.

ADJOURNMENT (2hr. 00min. 25sec.):

MOTION: To adjourn the April 26, 2021 Washington Zoning Commission Meeting at 9:31pm, by Mr. Werkhoven, seconded by Mr. Solley, passed 5-0 vote.

Respectfully Submitted,

Tammy Rill

Tammy Rill

Land Use Clerk

May 3, 2021

To listen to this meeting, please follow this link:

https://townofwashington-my.sharepoint.com/:u:/g/personal/trill_townofwashington_onmicrosoft_com/EdgAvMrpMNxMrDYsuAuoLucBX_QcCORAudnQicIDtsH_nw?e=HGrKVF