

Zoning Commission

MINUTES
Public Hearing
August 7, 2017

7:30 p.m.

Upper Level Meeting Room

MEMBERS PRESENT: Mr. Averill, Mr. Reich, Mr. Solley,
Mr. Solomon, Mr. Werkhoven
ALTERNATE PRESENT: Mr. Burnham
ALTERNATE ABSENT: Mr. Sivick
STAFF PRESENT: Mrs. Hill
ALSO PRESENT: Mr. Bedini, Mr. Hayden, Mrs. Payne, Ms. Lord,
Ms. Dupuis, Ms. Sullivan, Mr. Ahearn, Ms. Hart
Mr. Coakley, Mr. Stevens, Mr. Levick,
Mr./Mrs. Lyon, Ms. McDevitt, Ms. M. Allen,
Ms. H. Allen, Mr. Kleinberg, Mr. Rosenfeld,
Ms. Bartlett, Mr. Yaunsem, Mr. Griffith,
Atty. Pires, Ms. Block, Mr. Lidly(?),
Mr. Lang, Mr./Mrs. Frank, Mr./Mrs. Robinson,
Mrs. Sutter, Mr. Bonachea, Mr. Armstrong,
Ms. Harris

PUBLIC HEARING

Revision of the Zoning Regulations/Expansion of Woodville and
Depot Business Districts and Additions/Revisions to Section
13.7.4 and 16.3.11 re: Off the Premises Signs for Approved Town
Landmark Sites, 4.4.20, 5.4.10, 6.4.13, 7.4.19, 8.4.21, 9.4.13,
10.4.13, and 17.9 re: Replacement of Nonconforming Structures by
Special Permit, Revision and Update of the Entire Section 17 re:
Nonconforming Lots, Land, Structures, and Uses, Section 21.1.1
re: Addition of Definition of "Abandonment"

Mr. Solley called the public hearing to order at 7:30 p.m. and seated Members Averill, Reich, Solley, Solomon, and Werkhoven.

Mrs. Hill read the legal notice dated 7/17/17, which was published in Voices on July 26 and August 2, 2017.

Mr. Solley listed the correspondence received to date and read a brief summary of each for the record.

Each of the sections with proposed revisions was reviewed and discussed.

Off the Premises Signs for Approved Town Landmark Sites: Mr. Solley explained that because there is only one approved Town Landmark Site, Hollister House, the proposed revision to allow up

to two off the premises directional signs, each not larger than 2 sq. ft., would impact only one property in Town at this time.

Mrs. Frank asked if there were specific sites proposed for the off the premises signs. Mr. Solley said, no, there were none at this time.

Expansion of the Washington Depot Business District: Mr. Solley explained the Commission proposed to add four properties to the district; three on River Road; the Legion Hall/Senior Center, Pizza Building, and Kelly office properties. He noted all of these properties have either been used commercially since the mid 1950's or are owned by the Town. All have frontage on River Road.

An unidentified man asked if including these properties in the business district would have any tangible impact and if that would prevent their residential use. Mr. Solley responded that there would probably be no impact as two were already used commercially and said inclusion in the business district would not prohibit residential use.

Mr. Solley stated the fourth property proposed to be included in the Depot Business District is the Town Highway Dept. property at 10 Blackville Road. He explained the district boundary line splits this lot, meaning it is now governed by the more restrictive R-1 regulations. Including the entire lot in the business district would result in more lenient coverage and setback requirements for the Town and he noted that in the past the use of the property has been restricted due to coverage and setback issues, which required variances.

Mr. Reich asked, what is the maximum lot coverage permitted in the business district? Mr. Solley said it is 25%.

Ms. H. Allen asked if the American Legion would be protected. Mr. Solley said that property is owned by the Town, which has an agreement with the Senior Center and American Legion, who will be able to continue their use of the building for as long as the agreement exists.

Mr. Lyon, First Selectman, stated from the viewpoint of a municipal official, it would be much easier to manage the Town Garage property if the Town did not have to go through a two month permit process for every proposed activity there. He also noted that the Legion Building could not be sold without approval at a Town Meeting.

Expansion of the Woodville Business District: Mr. Solley reviewed the history of this business district and noted that 16 years ago the Commission had decreased its size by eliminating the triangle of land between Rt. 202, Rt. 341, and Wilbur Road and the land along the south side of Rt. 202. He noted at the time, residents had objected to the proposed boundary change. He explained that due to the recent increase in activity in this

district, the Commission was considering restoring it to its previous size. He said no plans were finalized and that the commissioners would seriously consider ideas and comments from the public.

Mr. Ahearn, whose property would be added to the district, questioned the Commission's motivation for proposing the change. He spoke about the history of his property, how it had been a stop on the Underground Railroad, and that he was seeking its designation as a historic landmark. He noted he had invested a lot of money and effort to restore his property and thought the proposed change in the district boundaries would decrease his property value. He stated he was not anti-growth, but supported Smart Growth. He questioned whether the proposed expansion recognized the environmental value of this area and said he feared people would move away should this revision be adopted. He asked why the Commission would consider this expansion when there are many vacant businesses in Town's other commercial districts. Mr. Solley noted after sitting unused for quite some time, there had been recent applications for the business use of the adjoining Grampa Snazzy's property and that the Commission thought that returning it to the business district might make it easier to find a use for it that would be allowed.

Mr. Ahearn asked how much of his land would be taken? Mr. Solley said none of his land would be taken, that the change would be only a change in designation, and the use of a property would not change unless the property owner proposed another use.

Ms. Sullivan said she was concerned about the increase in noise that would result from the expansion of the business district. She asked why Grandpa Snazzy's could not continue to be grandfathered in. Mr. Solley agreed there were uses for that property that were already grandfathered in.

Mr. Coakely asked why the Commission was considering rezoning residential properties. Mr. Solley responded it did not make sense to rezone only the one property in the triangle. Mr. Averill explained that when properties are rezoned, the Commission does not require they be used commercially; they may remain residential.

Mr. Levick thought the proposed change could have a detrimental effect on values in the greater Litchfield area where it was clear what each town stood for and what the purpose and identity of each was. He said he did not understand the purpose for the proposed expansion or what the additional business area would add to the Town.

Mrs. Frank noted that as one drives north on Rt. 202, when reaching the H.O.R.S.E. property, it visually becomes a residential district. She did not know what the Town would gain by expanding the business district here.

Ms. McDevitt questioned the objective of redistricting, said she does not see this as a commercial area, and noted there are many commercial vacancies in the Depot. She opposed the proposed expansion.

An unidentified woman asked if the Commission had a long term vision for Woodville, saying it was a distinctive, but forgotten slice of Washington. Mr. Solley noted the Community Table had been vibrant while it was open and he thought there would be another restaurant there some day. He said he thought it had been confusing years ago when the district had been made smaller because it had been commercial for such a long time. He did not know whether the Commission envisioned it would become a commercial hub and he read Section 10.1 of the Zoning Regulations; the Purpose of the Woodville Neighborhood Business District. He noted that the Woodville Business District does not have as many permitted uses as the Town's other business districts.

Ms. Sullivan asked why all the other business districts in Litchfield County have 30 mph speed limits, but Woodville does not. Mr. Solley said that was up to the state traffic commission.

Mr. Ahearn asked, since the Commission has no long term vision for Woodville, why change it? Mr. Solley said this part of Woodville had been commercial until 2000, it was not clear why it had been reduced at that time, and the Commission was offering to reinstate it to its previous size and boundaries.

Mr. Ahearn asked if the expansion of the business district would result in less traffic. Mr. Solley thought there would be no impact. Mr. Ahearn asked how that could be with cars pulling in and out of businesses. Mr. Solley said that Rt. 202 already has a lot of traffic each day and did not think that would increase.

Ms. Dupuis stated that five years ago the portion of Rt. 202 from New Preston to Rabbit Hill Road had been designated a scenic road and she noted that Woodville, too, is now very scenic. She thought it should be kept as it is; in keeping with its scenic and rural character. Mr. Solley asked if she included the triangle or just the section along Rt. 202. Ms. Dupuis said she thought it all should be kept as it is and most in attendance agreed when asked for a show of hands.

An unidentified woman asked why 261 Litchfield Turnpike was included in the proposed expansion since it had never been used commercially. Mr. Solley said the business district had previously been 600 ft. wide along the south side of Rt. 202 and this property was located within that area.

Mr. Lyon noted his property abuts Grampa Snazzy's and said there was no better place for a commercial district than along a

state highway. He thought the list of permitted uses for Woodville was pretty restrictive, he saw no harm in designating this area along Rt. 202 as commercial, and thought in the interests of economic development, it might create additional business opportunities in Town.

Mr. Stevens said he did not think a commercial use on the Grandpa Snazzy's property would impact the rest of the triangle or the traffic on Rt. 341 and Wilbur Road. Ms. Sullivan disagreed, saying many cars already cut through Wilbur Road.

Ms. Sullivan asked if there has been an overwhelming request for more commercial space in Washington. Mr. Solley responded, not specifically, but the business association has been trying to revitalize the commercial centers. Mr. Werkhoven noted the hi tech business currently housed in the Depot has been looking for space in which to expand. Mr. Solley said this was true, but he did not think Woodville could accommodate this business owner's specific needs.

Mr. Ahearn stated while it was important to keep businesses in Washington, it was also important to retain homeowners.

Ms. Lord noted the parking problems at H.O.R.S.E. and the Community Table and asked if the business district was expanded, where would the cars park. Mr. Solley said it would be up to a new business owner to provide on site parking. Ms. Lord said H.O.R.S.E and the Community Table had been allowed to open without sufficient parking and said she did not want more parking to occur along the roads.

Revision and Updating of Section 17: Mr. Solley explained the current Regulations do not permit the replacement of a nonconforming structure once it is removed and said it was in the Town's interest to decrease the number of nonconforming buildings when possible. But he added that if he were the owner of a nonconforming structure, he would want to be able to rebuild it if necessary due to a deficiency such as a deteriorating foundation or mold. And that, he explained, was what the Commission was endeavoring to do; to allow someone to tear down and rebuild a nonconforming structure, but to make obtaining a permit to do so more difficult. He explained that in cases described in Section 17.8, such as when a nonconforming building collapses due to an act of God, it may be rebuilt as long as its nonconformity is not increased. Sections 17.1 through 17.7, he said, were "boiler plate" clarifications made by the Commission's counsel who had been given the directive to clean up Section 17. He noted that the proposed revisions to Sections 17.8 and 17.9 were more significant.

Atty. Piers represented the Lake Waramaug Assoc. Mr. Solley noted the Commission had received his letter. Mrs. Hill noted

that all letters received in advance of the meeting had been forwarded to the commissioners.

Atty. Piers did not go into all of the points detailed in his 8/4/17 letter, but regarding the proposed Section 17.9 he asked, was this a good policy for the Town and would it provide for the ease of consistent application now and in the future. He disagreed with Mr. Solley's statement that Section 17.9 would make it harder to get a permit to demolish a nonconforming building, saying the proposed language would make it easier. He stated currently a variance would be needed to do the demolition and reconstruction, which would be permitted under Section 17.9 if it was adopted.

Mr. Robinson asked what Section 17.9 was. Mr. Solley gave a lengthy explanation reading both proposed Sections 17.8 and 17.9. He noted that although a lot of concern has been expressed about nonconforming structures near Lake Waramaug, the proposed regulations would deal with these structures throughout Town, including historic structures.

Mrs. Hill explained why the Commission considered the proposed regulations to be more restrictive than the procedure followed by zoning enforcement officers for the past 30 years of granting administrative approvals for the demolition and rebuilding of nonconforming structures as long as none of the nonconforming aspects were increased.

Mr. Solley further explained the proposed Section 17.9 would permit the demolition and reconstruction of nonconforming structures by Special Permit, which would require that the standards of Section 13 as well as specific requirements in Section 17.9 be met. He pointed out, for example, that the standards would give the Commission the right to deny an application to replace a nonconforming historic structure with a new structure that was not in keeping with the history, architecture, and/or culture of the area.

Atty. Piers stated that if the Commission enforced its current Regulations, Section 17.9 would not be necessary. He questioned whether the adoption of Section 17.9 would lead to unintended consequences such as litigation when an application was denied. He said that currently an applicant cannot compel the ZBA to grant a variance, but as proposed, if an applicant meets the criteria, the Zoning Commission would be forced to approve the Special Permit application. Mr. Solley disagreed, saying the Commission has great discretion under Section 13.

Atty. Piers said Section 17.9 undermines the regulations enacted by the Town in the last 15 years; regulations such as the setback for wetlands and watercourses and the expansion of the Lake Waramaug district. Although he did not support Section 17.9 he recommended "tweaks" should the Commission adopt it. These

included 17.9.A.3, where he proposed it should be only the Town Building Official and not an engineer hired by the applicant who determines whether it is feasible to repair an existing nonconforming structure, 17.8.3, which, he said, should include the definition of "feasible" from the Inland Wetlands and Watercourses Regulations, 17.3.4, which he urged the Commission to simplify, and 17.9.B, which he said needed three additions: a) that work within 0-50 feet of Lake Waramaug be held to the same standards under Section 6.5 as work done 50-75 feet from the lake, b) that the applicant demonstrate that he cannot build the structure in a conforming location on the property, and c) that the poor condition of the structure not be due to the inaction of the owner. He also recommended that a Section 17.9.E be added to require compliance with Section 12.1; wetlands and watercourse setback. He said this was a relatively new regulation adopted in 2005 that should not be abandoned.

These recommendations were discussed. Mr. Solley thought instead of a ruling by the Building Official, the Commission could require the applicant to pay for an engineer chosen by the Commission. Atty. Piers thought this would be a burden on the applicant. Mr. Solomon said if the proposed revisions were less restrictive than those in other Ct. towns, he would be OK with an extra burden on the applicant. Regarding including a definition for "feasible," Atty. Piers said this was needed so there would be a clear basis for determining whether it would be possible to repair a structure using sound construction principles. Atty. Piers stated the intensity of any new structure built under Section 17.9 should be at least comparable to that of the original nonconforming structure. What was meant by "comparable" was briefly discussed. Mr. Reich asked Atty. Piers if he was concerned that the proposed regulation would allow people to get around the regulations. Atty. Piers said he was because Section 17.9 provides a mechanism to allow owners to destroy useable structures to rebuild new ones. Mr. Solomon noted there might be greater protection under Section 17.9 which includes specific criteria for the approval of a Special Permit than with the ZBA, which "approves everything." He noted the Zoning Commission has the ability to enforce its Regulations as it sees fit.

Mrs. Frank said it was the volume of buildings that has been the most troubling aspect around the lake with all of the cottages morphing into three story homes. She asked who measures the nonconforming structures and how accurate the measurements are. Mr. Solley explained that as proposed, the nonconformities of any building could not be exceeded in any aspect; it would be required that nonconforming structures be rebuilt to their exact measurements. Photos and as-builts would be required. Mr. Averill noted that the building could not be torn down until the

permit was approved and so it would be possible to measure it during the application process.

Ms. Harris noted that so many of the uses on West Shore Road have gotten huge. Mrs. Hill responded that many were conforming structures that had been enlarged. Mr. Reich said the Zoning Commission is more sensitive now to lake issues than it has been in the past and that the land use staff pays attention to details and measurements when reviewing applications.

Mr. Crane asked what were the penalties for non compliance. Mr. Solley said in the first place, no permit would be issued unless an as-built had first been submitted. He also said there was a system of fines that could be levied and that the Building Official would not issue a certificate of occupancy if Zoning did not sign off due to non compliance.

Ms. Lord had two hypothetical situations she asked the Commission to comment on. First, if a nonconforming structure was located only 48 feet from the lake, and the owner wanted to increase its size, could the structure be moved back 2 ft. and then increased in size? Mr. Solley said that would still require a special permit under Section 6.5 for construction within 50-75 feet of the lake. Mr. Averill said in addition to the Zoning Regulations, there would other regulations such as those of the Inland Wetlands Commission, that would have to be met. Second, if the structure did not qualify for the special permit under 17.9 because the owners had not maintained it, what would happen if someone inherited the property and had not been negligent himself? Mr. Solley noted that a previous Commission attorney had written that any nonconforming structure that had not been intentionally abandoned could be rebuilt and this would be the case unless the law had been changed.

Mr. Frank noted the question remained regarding whether the requirements listed under Section 6.5 should be added for work within 0-50 feet from the lake. He thought these had not been required originally because no structure other than a boathouse was allowed within 50 feet of the lake. Mr. Solley said that was a good question that the Commission would consider.

Mr. Frank asked if there were any provisions for waivers. He thought the requirements could be burdensome for the replacement of a small shed, for example. Mr. Solley said there were no provisions for waivers and that the Commission had discussed the proposal with Atty. Zizka and had come up with one regulation to address all situations. Mr. Averill suggested that perhaps a ZBA application could be submitted to replace a small shed.

Mr. Frank then referred to CGS 8-13a, which states that when a building that violates the Zoning Regulations has been situated for three years without the commencement of enforcement action,

it is deemed nonconforming. He thought Section 17.9 must take this into account. Mr. Solley stated that Atty. Zizka had not addressed this issue. Mr. Solomon and Mr. Averill noted 17.9 requires the applicant to show the nonconforming building was legal at the time it was built. Atty. Piers agreed with the Commission that proposed Section 17.9.B.1 was not inconsistent with CGS 8-13a as they address two different concepts. Mr. Frank requested that this question be referred to Atty. Zizka for his opinion.

Mr. Hayden, director of the Lake Waramaug Task Force, noted the lake area has many nonconformities and he hoped that water quality protections could be built into the Regulations. He submitted a letter dated 8/7/17, which recommended referencing Section 6.5 in the revision of Section 17.9 to address work done within 0-50 feet of the lake and which suggested the use of simple stormwater treatment measures, landscaping, and low impact development to protect water quality.

Mr. Solley stated the comments from the public and from Atty. Piers had given the Commission a lot to consider and would very likely result in "tweaking" Section 17. He said all comments were appreciated and that the Commission would forward questions to its attorney.

Mr. Ahearn asked when a decision would be made about the Woodville Business District. Mr. Solley said a special meeting to consider the proposed revisions and the comments received at the hearing would probably be scheduled for early September. He noted no other comments from the public could be taken after the close of the hearing.

MOTION: To close the public hearing to consider proposed revisions to the Washington Zoning Regulations. By Mr. Solley, seconded by Mr. Averill, and passed 5-0.

Mr. Solley closed the hearing at 9:42 p.m.

FILED SUBJECT TO APPROVAL

Respectfully submitted,

Janet M. Hill
Land Use Administrator