**ZONING BOARD OF APPEALS**

MINUTES

Public Hearing – Regular Meeting

**October 19, 2017**

7:30 P.M. Main Level Meeting Room

**MEMBERS PRESENT:** Mr. Catlin,Mr. Bowman, Mr. Wyant, Mr. Peterson, Mr. Horan

**ALTERNATES PRESENT:** Mr. Wildman, Mr. Gunnip

**ALTERNATES ABSENT:** Ms. Kaplan

**STAFF PRESENT:** Mr. Ajello, Ms. White

**OTHERS PRESENT:** Atty. Fisher, Mr. Neff, P.E., Mr. Kleinberg, Mr. & Mrs. Solomon, Ms. Gager, Mr. Worcester, Architect, public

**PUBLIC HEARING(S):**

Mr. Bowman called the meeting to order at 7:30 p.m.

**Seated**: Mr. Bowman, Mr. Peterson, Mr. Wyant, Mr. Gunnip, Alt. Mr. Wildman, Alt.

**ZBA-1044: Request of Arthur H. Howland & Associates, P.C./169 West Shore Road/For Variance from Section 11.6.1.C, Front, Side & Rear Setbacks and Section 12.1.1:**

Mr. Bowman, Vice Chairman, read the letter from P. Szymanski, P.E., addressed to Mr. Catlin, Chairman, dated October 19, 2017, requesting that the above mentioned hearing be continued to the next ZBA Meeting on November 16, 2017.

**MOTION:** To continue the public hearing for application **ZBA-1044** at the regularly scheduled November 16, 2017 meeting of the Town of Washington ZBA**:** Request of Arthur H. Howland & Associates, P.C./169 West Shore Road/For Variance from Section 11.6.1.C, Front, Side & Rear Setbacks and Section 12.1.1, Wetlands and Watercourses Setbacks, by Mr. Wyant, seconded by Mr. Wildman, passed by 5-0 vote.

**Seated**: Mr. Catlin, Mr. Bowman, Mr. Peterson, Mr. Wyant, Mr. Horan

**ZBA-1045: Request of William Worcester Architect (for Kogel)/28 Shinar Mountain Road/Special Exception from Section 17.5 – Nonconforming Structures – To construct a front porch:**

Mr. Worcester, Architect was present to represent Kogel, the property owner. He stated that his client is requesting to add a front porch that would extend into the front yard setback by 3 feet 7 inches. He noted that the main body of the house already extends 6 feet 7 inches into the front yard setback but the proposed front porch would not extend out as far as this portion of the existing house. Mr. Worcester read the letter explaining the request for a Special Exception from Section 17.5, addressed to the Zoning Board of Appeals, from himself, dated 9/15/17 regarding 28 Shinar Mountain Road – Proposed front porch (on file in the Land Use Office).

Mr. Worcester submitted photographs of the existing conditions of the structure.

Mr. Catlin asked if the roofline would change.

Mr. Worcester responded that it would change slightly with the front porch.

The Commissioners looked at the drawing titled “Addition Section,” prepared for Kogel residence by William W. Worcester, Architect, with a revision date of 6/2/17, sheet A-2.

Mr. Worcester discussed some of the other renovations that they will be doing to the existing house. He noted that the front porch will add the benefit of shading the windows that face south.

It was noted that no railing would be needed.

There were no further questions.

**MOTION:** To close the public hearing for application **ZBA-1045**: Request of William Worcester Architect (for Kogel)/28 Shinar Mountain Rd/Special Exception from Section 17.5 – Non Conforming Structure – To construct a front porch, by Mr. Wyant, seconded by Mr. Bowman, passed 5-0.

**Meeting:**

Mr. Wyant stated that he feels the proposed plan is self-explanatory and he supports it. Mr. Horan stated that this proposed plan is a reasonable alteration. Mr. Peterson agreed with Mr. Horan and feels that this is a really modest project. Mr. Bowman stated that he agrees with the other Commissioners and the existing house is projecting in to the front yard setback already and the proposed front porch does not make it any worse and it is fitting with the type of house it is. Mr. Catlin stated that he agreed as well. He read Section 17.5 in the Zoning Regulations and how this application meets the requirements.

**MOTION:** To approve application **ZBA-1045**, request of William Worcester Architect (for Kogel) at 28 Shinar Mountain Rd for a Special Exception from Section 17.5 – Non Conforming Structures- to construct a front porch, by Mr. Catlin, seconded by Mr. Wyant, passed 5-0.

Mr. Catlin explained that the Commission has advised by counsel to schedule a hearing and, if the Commission chooses, discuss this appeal. He stated that there is an election coming up and a number of contested seats and it is up to the Commissioners to decide whether to schedule a hearing for November or December.

Atty. Fisher asked if new members were elected, would they start in January.

Mr. Wyant responded that he believes that the newly elected commissioner(s) would start two weeks after the election.

Mr. Ajello asked if the ZBA would be able to hear this appeal according to the Town of Washington Zoning Regulations. He referred to Section 18.1.1-Zoning Board of Appeals in the Zoning Regulations which read:

“To hear and decide appeals where it is alleged that there is an error in any order or decision made by the Zoning Enforcement Officer or in his absence by the Deputy Zoning Enforcement Officer, or in his absence the Zoning Commission in their grant or denial of a zoning permit”

He asked if there was a denial of an application.

Atty. Fisher confirmed that there was.

Mr. Ajello read the next sentence in Section 18.1.1:

“All other decisions of the Zoning Commission including, without limitation, those with respect to the grant or denial of a site plan, Special Permit, or amendment of the Zoning Regulations or the Zoning Map shall be appealable only to the Superior Court for the Judicial District of Litchfield.”

Atty. Fisher stated that the Town of Washington is unique in the State of Connecticut in that it allows an appeal of a decision from the Zoning Commission to the Zoning Board of Appeals. He referred to another case and stated that the Supreme Court” decided that if the regulations say that an appeal from the granting or denying of a permit by the Zoning Commission, that’s considered and enforcement action and therefore, unfortunately,” an appeal is submitted to the ZBA.

Mr. Catlin thanked Mr. Ajello for raising the issue and noted that he would discuss this with counsel.

Mr. Horan asked if Mr. Catlin’s discussions with town counsel was regarding whether the ZBA has jurisdiction to hear this appeal.

Mr. Catlin stated that for the fourteen years that he has been on this commission that there has never been an appeal. He informed the Commissioners that he had some very basic questions about the procedure and basics of scheduling. Mr. Catlin explained that he has a conflict and asked the counsel about that as well.

Mr. Horan agreed with Mr. Catlin and said that it seems that the Commission should get advice from town counsel as to whether they should take this appeal.

Mr. Catlin recused himself for the following discussion and handed the discussion over to Vice Chairman Bowman.

**ZBA-1046: Acceptance and possible discussion of 101 Wykeham Rise, LLC/101 Wykeham Road/Appeal of Decision by the Zoning Commission of the Town of Washington:**

Mr. Bowman scheduled the hearing for the regularly scheduled ZBA meeting on December 21, 2017 and asked if the other Commissioners agreed. All the Commissioners agreed to defer the scheduling until the December meeting.

Mr. Bowman stated that the ZBA can use the entire 65 days that the Commission has available to schedule a public hearing and during that time they can review the materials and discuss with counsel how to proceed.

**ZBA-1047: Request of Bitar/36 Carmel Hill Road/Special Exception from Section 12.14 – Noise Generating Equipment – To install a generator:**

Mr. Neff, P.E. was present to represent the property owner, Bitar. He read the “Explanation of Request for Special Exception” that was submitted with the application. The proposed location for the generator is approximately 31 feet from the dwelling/garage which houses the electric power distribution center and main electric panel serving the entire site. The proposed generator is 196 feet from the main residence, nearest property line to the proposed location is 91 feet along Carmel Hill Road, nearest neighboring property line is 151 feet. Mr. Neff noted that the calculated sound level at the nearest property line equals 48.95dB which is below the 50dB maximum allowable level.

The Commissioners and Mr. Neff looked at the maps titled “Topographic Survey,” prepared for George A. Bitar by Smith & Company Surveyors & Engineers, Inc., with a revision date of 12-13-13 and “Proposed Emergency Generator Site Plan,” prepared for George Bitar Residence, By Brian E. Neff, P.E. sheet 1of 1 dated 9-26-17.

Mr. Bowman stated that this proposed location seems very awkward.

Mr. Neff responded that, in terms of the power distribution, coming off a pole that is very near the garage, there is a transformer near the location and the main electric panel is in the garage structure. They intended to put the switch gear close to where the main load center is which is adjacent to the garage. He noted how far the generator is determining the size of the conductors. Mr. noted that this location is best in terms of efficiency.

Mr. Horan asked if those distances affect the noise level.

Mr. Neff responded that it did not. He stated that the noise level analysis was done at the proposed location of the generator. He added that the further away the generator is from the boundary line the more the noise level decreases at that boundary line.

Mr. Catlin asked what fencing is being proposed as the surround for the generator.

Mr. Neff responded that it would be a solid wood fence and would be 6 feet high. The generator would sit on a concrete pad atop gravel and would have 4 feet of space around the generator.

Mr. Catlin stated that he understands why the property owner is proposing this location, the house is fairly hidden from the road but this generator would be in full view from the road. He noted that any noise coming out of the generator would travel down the hill and amplify out into the road.

Mr. Neff stated that the spec sheet for the generator was submitted with the application. He referred to Section 12.14.4 regarding the sound level requirements and stated that this location, with the distance and the fence meets the requirement being under 50dB.

Mr. Catlin asked where the 7.5dB decrease for the fence come from.

Mr. Neff responded that this information came from the fence manufacturer’s company and some research that he performed.

Mr. Bowman stated that he has similar concerns as Mr. Catlin. He feels there are better locations for this generator that still are efficient in terms of being close to the panel.

Mr. Neff stated that it is fully wooded from the road to the proposed location.

There was a brief discussion regarding the topography of the property and the levelling of the area for installation of the generator.

Mr. Neff discussed the improvements that the property owner has made. He noted that the power company recommended this location and it is the closest area to serve the site. Mr. Neff informed the Commissioners that this proposed location has been approved by the Inland Wetlands Commission because it is within the regulated area.

There was a brief discussion regarding the building principally served and Section 12.14 in the Zoning Regulations.

The Commissioners looked at the Spec sheets for the proposed generator.

Mr. Neff stated that this proposed location was recommended by the electric engineer. He noted that the Special Exception has a dB requirement of 50dB or less and this location is below that requirement.

Mr. Catlin stated that he is not convinced that this meets the dB requirement.

Mr. Horan asked how Mr. Neff could prove that it does meet the requirement. He stated that he did not see any basis in which they could find Mr. Neff’s findings untrue.

Mr. Neff stated that the numbers that are provided by the generator manufacturers and the fence manufacturers both indicate that the sound levels would be below the requirement in Section 12.14.

Mr. Catlin stated that he did not feel that this application is in the ‘spirit’ of the regulation. He feels that it has not been demonstrated to his satisfaction that this is the best proposed location for the generator. Mr. Catlin said that this proposed location would most likely end up with everyone in the surrounding area being able to hear it except the property owner and that is not the intent of this regulation.

Mr. Neff asked Mr. Catlin what he would like to see in order to demonstrate this as the best location.

The Commissioners recommended a site specific test be done that would show that this proposed location complies with the regulation.

Mr. Bowman stated he would recommend an accurate acoustical study, confirmation of the size of generator and how the ground in going to be modified to accommodate the equipment.

Mr. Neff stated that he would like to talk to the property owner and continue this public hearing

**MOTION:** To continue the public hearing for application **ZBA-1046**: Request of Bitar/36 Carmel Hill Road/Special Exception from Section 12.17-Noise Generating Equipment – To install generator, by Mr. Wyant, seconded by Mr. Bowman, passed 5-0 vote.

**CONSIDERATION OF THE MINUTES:**

**Correction(s)**

Each reference to Mr. Stewart **should read:** Mr. Schwartz

**MOTION**: To accept the minutes of the September 21, 2017 meeting as corrected, by Mr. Wyant, seconded by Mr. Wildman, passed 5-0 vote.

**ADJOURNMENT**

**MOTION**: To adjourn the meeting at 8:27 p.m. by Mr. Wyant, seconded by Mr. Wildman, passed 5-0 vote.

**Filed Subject to Approval.**

**Submitted by:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Shelley White, Land Use Clerk

October 25, 2017