

January 23, 2006

MEMBERS PRESENT: Mr. Averill, Mr. Fitzherbert, Mrs. Friedman, Mr. Martin, Mr. Owen

ALTERNATES PRESENT: Mr. Abella, Mr. Wyant

ALTERNATE ABSENT: Mr. Shapiro

STAFF PRESENT: Mr. Ajello, Mrs. Hill

ALSO PRESENT: Mr. Neff, Mr. Picton, Mr. Tagley, Atty. Ebersol, Mr. Worcester, Mr. and Mrs. Williams, Mrs. Condon, Mr. Gitterman, Mr. Charles, Mr. Sears, Mr. Wasserstein, Mr. Papsin, Mr. Boling, Ms. Stevens, Mrs. Andersen, Mrs. Mathews, Mrs. Johnson, Mr. Boyer, Mr. Carey, Mr. Brigham, Mr. Carter, Mr. Owens, Mr. and Mrs. Wright, Ms. Campbell, Atty. Kelly, Mr. DeVries, Mr. Ficalora, Mr. McQueen, Mr. Horrigan, Press

PUBLIC HEARINGS

Myfield LLC./7 Mygatt Road/10 Dwelling Units

Mr. Owen called the public hearing to order at 7:32 p.m. and seated Members Averill, Fitzherbert, Friedman, Martin, and Owen. Mrs. Friedman read the legal notice published in **Voices** on 1/11 and 1/18/06. Mr. Owen then read the list of documents submitted to the file to date.

Atty. Ebersol gave a brief introduction citing both the Inland Wetlands Commission and Health Department approvals, the 6/20/05 confirmation from Mr. Black of the Judea Water Company that it would be willing to provide water for the ten units, and the 1/10/06 letter from Mrs. Allen of the Washington Community Housing Trust, which stated that it had agreed to administer the three proposed affordable units.

Mr. Boling, agent, noted the application for 10 dwelling units, 7 market value single family homes and 3 affordable attached condominium units, provided Washington's first affordable housing that did not consist of rental units and was consistent with the Town's development and conservation goals. He said the application set high standards with the preservation of 78% of the property as open space, a compact building footprint that kept impervious surfaces to 8.56%, and a design consistent with rural character. He said the units were located on a 13.5 acre parcel near the village center. He noted a homeowners' association would be established for the maintenance of all the units and the affordable deed restrictions would be permanent, not just for 40 years as the state statute requires and would be administered by the WCHT.

Mr. Worcester, architect, addressed the architectural details. The three two floor condo units would have 1144 sq. ft. each. Those units and their garages would both be in barn like buildings. The units would have rear decks, views across the field, and parking areas screened from the road. The seven market rate single family dwellings would each have 3160 sq. ft. on two levels. They would each have their own garage

and their facades would vary.

Mr. Boling pointed out the driveway and parking areas. He stated the driveways would be compact, narrow, and unpaved and that a groundwater infiltration system would be installed underneath to handle runoff. Twenty-five guest spaces would be provided and overflow parking could be accommodated along the driveway.

Other points included: the field where the septic system would be located would remain open, the conservation easement area would be permanent open space, lighting would be controlled by the homeowners' association, no floodlights would be permitted, all lighting would be directed downward and the light source shielded, and there would be no signs other than street numbers on the houses and a street sign at the end of the driveway.

Mr. Neff, engineer, briefly discussed the septic system and storm water management plan. Each building would have an individual septic system. No pumping would be needed. He noted the state health department had approved the application with conditions. All but one of the conditions had already been met, and the final one, additional perc tests, would be addressed on 2/1. Underground infiltration units would be installed behind each unit to handle the roof drainage. The driveways would be gravel and/or grass pavers so stormwater would be absorbed and the amount of runoff off site would be reduced. Post development runoff would be 10% less than predevelopment. He detailed the catch basin piping system that would collect the stormwater and carry it to a detention basin. That basin would collect sediment and would have a metered outlet to control the rate of flow as the water was released. The map, "Proposed Site Plan," by Mr. Worcester, (based on Mr. Alex's January 2005 survey) and revised to 11/21/05 was reviewed.

Atty. Ebersol stated per state law Myfield must tie into the public water supply, the Quarry Ridge system, because it is within 500 feet of the proposed development. He noted the 6/20/06 letter from Mr. Black of the Judea Water Company who agreed to service Myfield. An additional backup well will be installed for use by both Myfield and Quarry Ridge.

Atty. Ebersol noted the "Affordability Plan," unsigned, dated December 2005 had been submitted to show the proposed affordable units would comply with Section 8-30g of the state statutes. He stated these units would be constructed first. He said all Myfield residents would have the same rights and privileges and could use all the common facilities. He noted the enforcement of the requirements under the state statute was the responsibility of the Zoning Commission.

Atty. Ebersol addressed the issue of comparability. He noted there was no specific referral to this concept in Section 8-30g and the only court case ruled that all units had to be constructed of the same quality materials and finished to the same degree. He advised the Commission that Mr. Shapiro, in his 11/26/05 memo to the Commission, had found comparability was required within each type of unit. Atty. Ebersol noted all the Myfield units would be finished and referred to the comparison sheet submitted and the 12/12/05 letter from Mr. Segalla to show all units would be constructed of the same quality materials resulting in high quality affordable units. Mr. Owen asked if all units would have fireplaces and decks. Mr. Worcester responded that the affordable units would not have fireplaces, but would have larger decks than the market rate units. Mr. Martin did not think the affordable and market rate units were comparable due to their different sizes and different amenities, but Mr. Worcester said they all had the same design standards and quality materials. Mrs. Friedman asked if the countertops, for example, in the different type units would be the same. Mr. Worcester said they would. Mr. Boling warned that if the Commission insisted on identical units, the resulting plan would consist of a greater number of units and they would be lower quality. Mr.

Owen asked why the market rate and affordable units had separate driveways. Mr. Boling said a physical separation was warranted due to the different life styles - retirement/young families - in the two types of units. Mrs. Friedman asked if the applicant would consider a single driveway if the Commission asked for one. Mr. Boling said it would. Atty. Ebersol stated that based on the state statutes and case law the proposal does have comparability within the different types of units and therefore, was comparable and in compliance with all the requirements of Section 8-30 and furthermore, was consistent with the Town's Plan of Conservation and Development.

Mr. Boling said there was a general misconception that once the Town achieves 2% affordable units a moratorium goes into affect. He said, in fact, the greater of 2% or 75 equivalent points is needed for a moratorium, and in Washington's case, the 75 points is required. He said this means that Washington is currently vulnerable to affordable housing developments. He thought then, it made more sense for the Town to approve an application such as Myfield, which fosters community diversity and is consistent with the goals of the Plan of Conservation and Development. He thought approval of this application would provide the Commission with a precedent to hold future applications to similarly high standards such as large open space set asides and low coverage.

Mr. Owen explained that usually the Zoning Commission judges applications based on their compliance with the Zoning Regulations. Since this is an application for affordable housing, however, the Commission can't do that in this case. Non compliance with the Zoning Regulations would not be a valid reason to deny the application; only public health, safety, and welfare could be cited as a basis for denial. And should the Commission deny the application, the applicant could appeal to the state under the Affordable Housing Appeals Act.

Mr. Tagley, president of the Quarry Ridge Condo Assoc., voiced his concern about what would get built and what it would look like. He thought compliance with the Zoning Regs was important because they determine what the Town will look like. He did not want New Preston to become a "dumping ground." Mrs. Friedman read the 1/20/06 letter he submitted from Atty. McTaggart, which was in response to the 12/11/05 letter from Atty. Zizka re: issues relating to affordable housing. In short, she stated the requirements for comparability were not met because 1) the application did not provide for comparable workmanship because it excluded specifications for custom finishes for both types of units and 2) the size and types of the units were not comparable. She suggested this could be corrected if the applicant would provide affordable as well as market rate condo units and affordable as well as market rate single family dwellings in addition to a more detailed specifications list on the custom finishes.

Mr. Carter asked for clarification regarding why the applicant was allowed to submit an application that did not meet the local Zoning Regulations. Mr. Owen explained again the state of Ct. was working to prevent local municipalities from prohibiting affordable housing under their Zoning Regulations and that there were very few grounds on which a local board could deny such an application.

Mrs. Andersen read her 1/23/06 statement, which included the following points: 1) Section 8-30g of the CGS is an egregious unfunded state mandate, 2) it runs contrary to the Town's right to exercise local control of development, 3) it creates pockets of segregated communities, 4) other towns have managed to ignore this statute and maintain their local control over development, 5) this statute will be used by larger for profit developers in the future, 6) the housing stock in Town may already be at the moratorium level, and 7) the Commission should use every means available to deny the application.

Mr. Wasserstein agreed with Mrs. Andersen and said the Myfield application violates the law in fact and spirit. He thought the comparability standard was not met and that the proposal was socio-economic segregation.

Mr. Picton submitted a copy of the 1/6/06 letter he had written to the **Litchfield County Times**, which included the following points: 1) the need for affordable housing does not justify a state statute, which invalidates local zoning and enables rampant growth of 70% market rate and 30% affordable units at odds with town planning efforts, 2) under the statute the 30% affordable units are affordable for only 40 years, 3) using the 70%:30% ratio, Washington would have to grow by 43% to meet the 10% objective, 4) therefore, mixed development which bypasses local zoning needs a much higher component of affordable units than 30%, and 5) once the moratorium is reached the Town should attempt to require developments consisting of all affordable units, which are permanently deed restricted for that use.

Mr. Martin noted that the Zoning Commission was genuinely concerned about the comparability issue and said that the Commission always considers the harmony of design within both the neighborhood and within the site when it reviews applications. He said the current application differed from previous affordable housing applications because the others had been for 100% affordable units, while this one was for a mix of affordable and market rate units. He said the Commission would carefully review the application and come up with its own view of what's right and what's needed to meet the comparability standard.

Mrs. Andersen asked who was in charge of getting the Town to the point where the moratorium would start and said the Town should be talking to the private schools about registering their "affordable" units. Mrs. Friedman did not think private school housing could count towards the moratorium because it was not deed restricted.

Mr. Carey asked how the developer decided to focus on the Myfield location and asked if it was due to the transition zone recommended in the Plan of Development. Mr. Owen said that transition zone does not exist; the Zoning Commission had never implemented that recommendation of the Plan. Mr. Boling said it made sense for new development to be located near the existing village centers.

Mr. Owen said he did not see the proposal as a single development. He said the affordable and market rate units did not share real estate or driveways and that the affordable units did not have access to the open space. Atty. Ebersol stated it was a single proposal on a single parcel with one homeowners' association. He noted the applicant had originally applied to the Inland Wetlands Commission for three affordable single family dwellings, but that Commission did not want those units so close to the watercourse. As a result the affordable units had been moved to the present site, where there was not enough room for three stand alone houses. Mrs. Friedman asked if there were examples in other towns of affordable housing applications with such disparity between the affordable and market rate units. Atty. Ebersol stated he was not aware of any projects in other towns that were so tastefully done and in character with the community. Several Commissioners thought the application created housing opportunities for the affluent rather than affordable housing opportunities. Mr. Boling and Atty. Ebersol stated the point of the state statute was to link the creation of affordable to market rate units.

Mr. Tagley asked how the Quarry Ridge Condominiums had been approved by the Zoning Commission. Mr. Martin explained in the mid 1980's the Town had a multifamily zone, which had since been deleted.

Mr. Martin recommended the public hearing be continued to allow the applicant to address the points raised in Atty. McTaggart's letter. He also said he did not think the application met the comparability standard due to the difference in size, location, access, architecture, views, etc. between the units and asked the applicant to draft a variation of the site plan to address these concerns. The other commissioners agreed. Mr. Owen thought the market rate and affordable units had no relation to each other and that the affordable units looked like service buildings.

Mr. Tagley asked if the Commission vote would establish a precedent for future projects. Mr. Martin said he did not think so because each future application would be site specific.

MOTION: To continue the public hearing to consider the application submitted by Myfield, LLC. for ten dwelling units at 7 Mygatt Road to 7:30 p.m. on Monday, February 27, 2006 in the Land Use Meeting Room, Bryan Memorial Town Hall. By Mrs. Friedman, seconded by Mr. Fitzherbert, and passed 5-0.

At 9:02 p.m. Mr. Owen continued the hearing to Monday, February 27, 2006 at 7:30 p.m. in the Land Use Meeting Room, Bryan Memorial Town Hall.

Anderson (Devereux-Glenholme School)/77 New Milford Turnpike/ Special Permit: Section 4.4.10/School

Mr. Owen called the public hearing to order at 9:07 p.m. and seated Members Averill, Friedman, Martin, and Owen and Alternate Wyant for Mr. Fitzherbert who left the room. Mrs. Friedman read the legal notice published in **Voices** on 1/11 and 1/18/06.

Mr. Ajello read his 1/23/06 report.

Mr. Owen read the list of all the documents in the file, noting there was no site plan or floor plan.

Representing the applicant, Ms. Campbell, Center Director, read the 1/23/06 statement regarding the proposed new transition program for Devereux students who would soon be attending college. The program would be off campus in a setting where independent living and self study skills would be taught. The program would have 5 to 6 students to start and would progress to a maximum of 17 students. No changes to the floor plan of the existing building were proposed and the only change to the site plan would be additional landscaping. The students would be at the main campus from 8:15 a.m. until 6:30 p.m. and would be transported to and from by bus. The students would reside at 77 New Milford Turnpike during the week, but would not be there over the weekends or over vacations. With a 10:1 student to adult ratio, the most people staying in the building at any one time would be 19. In addition to the one bus, Ms. Campbell stated that each of the adult supervisors would have one car parked on the property.

Mrs. Friedman asked what would happen if students were not able to go home over the weekend. Ms. Campbell said they would go to the main campus.

Mr. Martin noted the Special Permit application was for a change of use from rest home to school.

Mr. Martin asked if there would be an athletic field outside. Mrs. Johnson, adjoining property owner, asked if there would be outdoor activities. Ms. Campbell said the property would be used mainly for academics and there would be little outside activity. Mr. Martin said he would be more comfortable if the school would list in writing the activities proposed and the limits on them.

Mr. Wright, adjoining property owner, asked the reasons the students would be placed in this program. Ms. Campbell said they are socially withdrawn with an inability to interact and so many don't do well in college. Although most are very bright, they need to connect with

smaller groups. She said the students would be graduates of the current Devereux-Glenholme program. Mr. Wright asked if all Devereux students would be eligible for this program. Ms. Campbell said, no, only those who would be successful in that setting would be admitted.

Mr. Owen asked how the supervision on the main campus compared to the supervision proposed off campus. Ms. Campbell said it would be the same, 10:1, and there would be staff on site overnight. Atty. Kelly asked if there would be any time during which the students would be unsupervised. Ms. Campbell said there would not.

Mr. Wright asked whether the school would have to come back to the Commission for any changes such as afternoon classes. Mr. Martin thought the Commission could make it a condition that if any intensification is proposed, approval by the Commission would be required.

Ms. Cappetta asked if there would be a sign on the property. Ms. Campbell said, no, there would be only a street number.

Mr. Martin noted the application stated there would be only low level residential lighting.

It was the consensus of the Commission that the applicant had not been specific enough on the application and should submit a written statement regarding the constraints proposed on the operation.

MOTION: To continue the public hearing to consider the Special Permit application: Section 4.4.10 submitted by the Devereux Glenholme School to operate a school at 77 New Milford Turnpike to the end of the meeting. By Mr. Owen, seconded by Mrs. Friedman, and passed 5-0.

At 9:37 the public hearing was continued until later in the evening.

These public hearings were recorded on tape. The tape is on file in the Land Use Office, Bryan Memorial Town Hall, Washington Depot, Ct.

REGULAR MEETING

Mr. Owen called the Regular Meeting to order at 9:40 p.m. and seated Members Averill, Fitzherbert, Friedman, Martin, and Owen.

Consideration of the Minutes

MOTION: To accept the 12/19/05 Public Hearing/ Regular Meeting minutes as written. By Mrs. Friedman, seconded by Mr. Averill, and passed 5-0.

Pending Applications

Myfield, LLC /7 Mygatt Road/10 Dwelling Units

Anderson (Devereux-Glenholme School)/77 New Milford Turnpike/ Special Permit: Section 4.4.10/School

It was noted these two public hearings had been continued; Myfield to 7:30 p.m. on February 27th and Anderson until later in the meeting.

New Application

Allen/158 Popple Swamp Road/Special Permit: Section 13.11/ Detached Accessory Apartment

Mr. Horrigan, contractor and authorized representative, was present. A public hearing was scheduled immediately following the Myfield hearing on Monday, February 27, 2006.

Other Business

Ficalora/1 Green Hill Road/Preliminary Discussion/Office Building

Mr. Ficalora, property owner, and Mr. DeVries and Mr. McQueen, architects, were present. Mr. Ficalora said he wanted to convert the gas station to an office building and wanted the Commission's guidance and feedback regarding the best possible way to accomplish this.

Mr. DeVries briefly reviewed the proposed site plan, which, he said, conformed to the current Zoning Regulations and coordinated as much as possible with the Depot Study. He proposed to maintain the existing structures, connect the shed to the main building so only one septic system would be required, install an 18 car parking lot in front of the building with limited planting along the existing sidewalk, convert the faade of the Texaco station to "village architectural quality," and install a walkway from the building to Bryan Plaza.

Mr. Owen asked what the owner would do differently if the Zoning Regulations were not a consideration. Mr. DeVries stated economics was an important issue in addition to zoning. He responded he would increase the square footage of the building to make it more economically viable. Mr. Owen asked if there were no parking requirements, how many spaces did Mr. Devries think would be sufficient. Mr. DeVries thought there would be three offices including a bank with a drive through teller in the building. Mr. McQueen thought 18 parking spaces to comply with the current Zoning requirements was too much for an 1800 sq. ft. building. Mr. Ficalora thought if anything were possible, he would build a two story building. Mr. McQueen noted the owner did not have many options for developing the property due to the current Zoning Regulations.

Mr. Owen noted the public likes the Depot the way it is, but the current Regulations prohibit people from constructing anything like it. He said the Commission understood its current Regulations stand in the way of the changes discussed for the Depot and that revisions are needed. Mr. Fitzherbert pointed out this property is the centerpiece of the Depot, is located at its major intersection, said this was a one shot opportunity to improve it, and therefore, he agreed with Mr. Owen's approach. Several commissioners noted a larger building with parking behind it would be more in keeping with the Depot than would the site plan under discussion. Mr. Martin suggested the Regulations could be revised similarly to the Marbledale regulations, which provide greater flexibility to achieve development more in keeping with the existing character of the village center. Mrs. Hill said moving the building to the front of the lot with parking to the rear would be ideal, but if economic considerations would not permit it, then changing the design of the building from modern suburban architecture to a two story building more in keeping with the character of the Depot like the existing surrounding two story buildings would help preserve the Depot's character. She also encouraged the Commission to decrease the number of parking spaces required and supported the owner's idea to connect

this property with the available parking in Bryan Plaza. Mr. Owen asked if second story space could be used for dwelling units if the architects did not think it would be suitable for office space. They were not enthusiastic due to the increased building costs to meet the higher construction standards that would be required per the state Building Code.

Mr. Owen stated the Commission would begin immediately to review its Regulations to determine what revisions could be implemented quickly to allow the renovation of this property to be more in keeping with both the Town Plan and the desires of the property owner. In the meantime, the architects will work on an alternate plan and will present it to the Commission at another preliminary discussion. The Commission thanked Mr. Ficalora for his willingness to work with the Town.

Revision of the Zoning Regulations/Section 16/Signs: It was noted Atty. Zizka had not yet sent his review of the proposed language. Atty. Kelly asked if there was still time to submit suggestions and he was told they would be welcome. Mr. Owen thought perhaps the draft could be sent to a professional sign company for comment as there had been no feedback received from the business community.

Revision of the Zoning Regulations/Section 15/Parking: Mr. Owen asked the commissioners to read the article, "Parking: How Much is Enough?" published in the Winter 2005 edition of **Technology Transfer**. He said planning for the maximum use was not always wise as the result could be a sea of asphalt parking spaces. He suggested the Commission work to limit the amount of asphalt required and to encourage businesses to share parking areas.

Depot Study: Mr. Owen said the ongoing Depot Study was so encompassing and abstract that he did not think the Zoning Commission should wait for a townwide consensus before beginning work to revise the Zoning Regulations. He suggested the Commission begin to draft regs that would allow development similar to what already exists in the Depot. He asked the commissioners to think about the issues of parking, setbacks, and coverage so they can be discussed at the next meeting. He also volunteered to serve as the Commission's liason for Planning's upcoming Depot discussions.

Best Management Practices Brochure: Mr. Owen reported the Conservation Commission is looking for volunteers to help write a best management practices brochure. There were no volunteers.

Pending Application

Anderson(Devereux-Glenholme School)/77 New Milford Turnpike/ Special Permit: Section 4.4.10/School

MOTION: To reconvene the public hearing to consider the Special Permit application: Section 4.4.10 submitted by Mrs. Anderson (Devereux Glenholme School) for a school at 77 New Milford Turnpike. By Mrs. Friedman, seconded by Mr. Martin, and passed 5-0.

Mr. Owen reconvened the hearing at 10:19 p.m. and seated Members Averill, Friedman, Martin, and Owen and Alternate Wyant for Mr. Fitzherbert who left the room.

Ms. Campbell submitted a signed written list to provide additional details and specifications about the proposal. These included: 1) no sign other than the street number, 2) use of the existing parking lot by normally not more than three vehicles, 3) no new lighting, 4) no increase in

traffic, 5) neighbors will be consulted regarding landscaping improvements, 6) no changes to the existing driveway, 7) students to be transported to and from the main campus by bus, which will drive into the property to pick them up and drop them off, 8) no changes to the exterior of the existing structure, 9) student music to be limited to headphones only, 10) no additions are planned and the old shed will be removed, 11) the ratio of staff to students will not exceed 1:10 with one staff member awake through the night while the program is being established, and 12) no organized outdoor team sports.

The Commission then reviewed the Special Permit standards in Section 13.1.B and found the proposed use was in compliance with them all.

MOTION: To close the public hearing to consider the Special Permit application: Section 4.4.10 submitted by the Devereux Glenholme School to operate a school at 77 New Milford Turnpike. By Mr. Martin, seconded by Mrs. Friedman, and passed 5-0.

Mr. Owen closed the public hearing at 10:29 p.m.

MOTION: To approve the Special Permit application: Section 4.4.10 submitted by the Devereux Glenholme School to operate a school at 77 New Milford Turnpike as specified in all of the written documents in the file. By Mr. Martin, seconded by Mrs. Friedman, and passed 5-0.

MOTION: To adjourn the meeting. By Mr. Owen.

Mr. Owen adjourned the meeting at 10:36 p.m.

FILED SUBJECT TO APPROVAL

Respectfully submitted,

Janet M. Hill, Land Use Coordinator