

• January 24, 2005

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

MEMBERS ABSENT: Mr. Fitzherbert, Ms. Page

ALTERNATES PRESENT: Mr. Abella, Mr. Brinton, Mr. Shapiro

STAFF PRESENT: Mr. Ajello, Mrs. Hill

ALSO PRESENT: Mr. Ross, Mr. Bowman, Mr. Tagley, Mr. Meyers, Mr/Mrs. Hyde, Mr. Ernhout, Mrs. Waterhouse, Mrs. Matthews, Mr. Charles, Mr. Boling

PUBLIC HEARINGS

Revision of the Washington Zoning Regulations/Sections 12.14 and 18.1 Regarding Placement of Noise Generating Equipment and Clarification of the Authority of ZBA to Grant Special Exceptions

Mr. Martin called the public hearing to order at 7:30 p.m. and seated Members Friedman, Martin, and Owen and Alternates Brinton and Shapiro. Mrs. Friedman read the legal notice published in **Voices** on 1/12 and 1/19/05.

Mr. Martin explained the purpose of the proposed amendments was to empower the Zoning Board of Appeals under certain appropriate circumstances to locate noise generating equipment further from the structure served than is currently permitted. He reviewed the list of documents in the file and noted the Planning Commission had no objection to the proposed revisions. He then read the 12/15/04 memo from Mr. McGuinness of the NW Ct. Council of Gov'ts. Mr. Martin said he had consulted with Atty. Zizka regarding Mr. McGuinness' remarks. Atty. Zizka had indicated that under the state statutes Special Permits and Special Exceptions were the same and so had the same procedures and process. He suggested the addition of a definition for Special Exception to Section 21 would address Mr. McGuinness' concerns. Mr. Martin read the proposed definition for Special Exception and it was the consensus to include this in the proposed revisions.

Mrs. Friedman asked if the ZBA requires adjoining property owners to be notified of variance and Special Exception applications. Mrs. Hill said it does.

Noting Special Permits and Special Exceptions are the same, Mr. Owen asked whether there was a reason to retain the label, Special Exception. Mr. Martin said it was a useful term to help clarify for the public that a Special Permit application should be submitted to the Zoning Commission and a Special Exception application should be submitted to the ZBA.

Mr. Martin read the language of the proposed revisions and noted it would be up to the ZBA to decide on the exact criteria it would use to determine whether placing noise generating equipment in a proposed location would have less noise impact on neighboring properties than

would placing it in accordance with Sections 12.14.1, 12.14.2, and 12.14.3. Mr. Owen noted the Zoning Commission had required this equipment be placed close to the structures served as an incentive to owners to keep the noise level down. Mr. Martin agreed this was an effective method to keep noise levels down without measuring decibels, but also noted there may be other ways to reduce noise. These could include enclosures, sound shields, underground installation, etc. He also noted that if ZBA could be convinced that there would not be a greater impact on adjoining properties, the applicant would not have to prove a hardship in order to obtain a Special Exception Permit.

MOTION: To close the public hearing to consider revision

of the Washington Zoning Regulations: Sections

12.14 and 18.1 regarding placement of noise

generating equipment and clarification of the

authority of ZBA to grant Special Exceptions.

By Mr. Owen, seconded by Mr. Shapiro, and

passed 5-0.

Mr. Martin closed the hearing at 7:44 p.m.

Ross/24 Wilbur Road/Special Permit: Sections 10.4.1.a and 13.13/Retail Business and Housing in the Business District

Mr. Martin called the public hearing to order at 7:45 p.m. and seated Members Friedman, Martin, and Owen and Alternates Brinton and Shapiro. Mrs. Friedman read the legal notice published in **Voices** on 1/12 and 1/19/05.

Mr. Martin explained the applicant proposed to construct a building in the Woodville Business District with a residence on the second floor and a business in accordance with Section 10.4.1.a on the first floor. Mr. Shapiro read the uses permitted under 10.4.1.a.

Mr. Ross briefly reviewed his site plan by Altermatt Engineering, revised to 11/22/04 noting the second floor might be one or two residential units, but would have no more than a total of three bedrooms. He said the business access would be from Rt. 202, while the residential access would be from Wilbur Road, consistent with the Regulations. He noted the Health Department had approved the septic system for uses, which included a bakery and/or market, and said there would be two tenants on the first floor. He said he had met with the DOT who had determined the sight lines were OK, but did not yet have written approval. Parking was briefly discussed and it was noted the number of spaces proposed corresponded to the number required under Section 15 of the Regulations.

Mr. Bowman, architect, reviewed the elevations of the proposed structure, which would be nestled into the hillside so that both floors would have a ground level entrance.

Mr. Ernhout, resident of Wilbur Road, asked if Section 10.5.2 applied. Mr. Ajello responded that this section did not apply because the proposed driveway and parking area would not be paved. He also noted that the site plan showed 16 spruce trees along the boundary and foundation plantings, but advised the Commission it could require more if it thought more were needed.

Mr. Ernhout complained about the conditions on Wilbur Road and said he did not want another driveway entering this road because it would be unsafe. Mr. Martin noted the Wilbur Road driveway would be for residential use only.

Mr. Ernhout noted there are problems with wetlands in this area and said many houses here have water in their basements. Mr. Ajello agreed there are complex wetlands, but said most were located on the adjoining restaurant property and that the proposed driveway avoids them and has a stormwater containment plan that was approved by the Inland Wetlands Commission.

Mr. Hyde, resident of Wilbur Road, asked several questions about the detention basin and said he thought the proposed construction would result in a pool of stagnant water. He also asked about the size of the proposed apartments. It was noted again, the Inland Wetlands Commission had approved the drainage plans and that the proposed apartments met the minimum size requirements under Section 13.13. Mr. Martin stated the Health Department had approved the septic system. In response to another question by Mr. Hyde, Mr. Ross pointed out a grease trap was included in the plans in case a bakery or market moves into the building. Mr. Hyde said he would prefer more buffering along Wilbur Road. Mr. Ross drew in three additional 6 to 8 ft. spruce trees along the front boundary of the property as an amendment to the site plan.

Mr. Tagley asked if the proposal fit into the scope of what the Commission had been trying to accomplish when it amended the Woodville Business District regulations. Mr. Martin said it was consistent with the uses the Commission had found appropriate for this mixed residential/commercial area and was in line with the Plan of Conservation and Development recommendation to enhance the village centers. Several of the Commissioners also noted the proposed intensity and scale was appropriate for the Town.

Mr. Brinton noted a specific retail use had not been applied for. Mr. Martin said the Commission normally knows the exact nature of the business applied for, but in this case, Mr. Ross planned to construct the building and to lease it to interested parties so he did not know the exact use at this time. He therefore suggested as a condition of approval that the applicant return to the Commission when the exact use is known for a ruling on whether the use is consistent with the uses permitted under Section 10.4.1.a.

Mr. Ernhout questioned the safety of the entrance off Rt. 202, saying there is a culvert and a deep gulley in the area. Mr. Ajello explained the driveway entered the property at the high point and the gulley was not a concern. Mr. Ernhout asked if drainage would be a problem, again noting the wet basements in many of the area homes. Mr. Martin noted both the Health Department and the Inland Wetlands Commission had already approved the plans. Mr. Ajello stated the wet areas on the property would be utilized for stormwater control.

Mr. Ernhout asked why the Wilbur Road driveway was necessary. Mr. Martin said the driveway complied with the Zoning Regulations, adding that Mr. Ross had addressed the Commission's concerns by permitting no commercial traffic to use Wilbur Road. Mr. Abella pointed out access to the apartments from Rt. 202 would be difficult due to the steep incline.

Possible conditions of approval were discussed. It was decided to include the two conditions recommended in the 1/24/05 ZEO Report, but

that it was not necessary to condition approval on a gravel driveway and parking area, since the site plan specified a gravel driveway.

MOTION: To close the public hearing to consider the

Special Permit application: Sections 13.13 and

10.4.1.a submitted by Mr. Ross for a retail

business and housing in the business district

at 24 Wilbur Road. By Mr. Owen, seconded by

Mr. Shapiro, and passed 5-0.

Mr. Martin closed the public hearing at 8:25 p.m.

First Washington Capital, LLC /89 Lower Church Hill Road/ Single Family Dwelling and Pool

Mr. Martin called the public hearing to order at 8:25 p.m. and seated Members Friedman, Martin, and Owen and Alternates Brinton and Shapiro. Mrs. Friedman read the legal notice published in **Voices** on 1/12 and 1/19/05.

Mr. Martin reviewed the list of documents in the file. He read the 1/20/05 letter from the Hinkel Design Group, authorized agent, requesting continuance of the hearing and an extension of the application. He then read the portion of Mr. Ajello's 12/17/04 letter to Mr. Matthews, which listed all the information required to complete the application. He then advised the Commission the only document requested that had been submitted was the letter of authorization for the Hinkel Design Group. No other information was submitted.

Mr. Martin noted the application had originally been received in November, but Mr. Ajello had not been able to review it because of its incompleteness. The request for an extension had an open ended time frame, and there had been no commitment by the applicant to submit the required information in a timely manner. He also noted the Commission has a time limit per state statute in which to act on any application and that if action is not taken within that time frame, it could be considered approved. He also noted that the applicant could reapply at any time after he had assembled the required information. For these reasons, he did not favor granting the continuance requested by the applicant. He recommended the public hearing be closed.

MOTION: To close the public hearing to consider the

application submitted by First Washington

Capital, LLC. to construct a single family

dwelling and inground pool at 89 Lower Church

Hill Road. By Mr. Owen, seconded by Mrs.

Friedman, and passed 5-0.

Mr. Martin closed the public hearing at 8:36 p.m.

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. Martin called the Regular Meeting to order at 8:36 p.m. and seated Members Friedman, Martin, and Owen and Alternates Brinton and Shapiro.

Consideration of the Minutes

MOTION: To accept the 12/20/04 Regular Meeting minutes

as written. By Mrs. Friedman, seconded by Mr.

Shapiro, and passed 5-0.

Pending Matters

Revision of the Washington Zoning Regulations/Sections 12.14 and 18.1: It was the consensus to approve the revisions as drafted with the addition of the definition of Special Exception to be added to Section 21 as discussed at the hearing. The effective date will be the earliest date possible consistent with state statutes after publication of the legal notice.

MOTION: To approve the revision of the Washington Zoning

Regulations: Sections 12.14 and 18.1 regarding

placement of noise generating equipment and

clarification of the authority of ZBA to grant

Special Exceptions with the addition of the

definition of Special Exception to Section 21

as discussed at the hearing: effective date to

be the earliest date in compliance with state statutes after publication of the legal notice.

By Mr. Martin, seconded by Mr. Owen, and passed 5-0.

Ross/24 Wilbur Road/Special Permit: Sections 10.4.1.a and 13.13: Retail Business and Housing in the Business District: Mr. Martin noted the application had been revised to add buffering (three additional trees) along Wilbur Road and that two conditions of approval had been discussed at the hearing.

MOTION: To approve the Special Permit application:

Sections 13.13 and 10.4.1.a submitted by Mr.

Ross for a retail business and housing in the

business district at 24 Wilbur Road per the

plans, "Site Plan," by Altermatt Engineering, LLC, revised to 11/22/04 and as further revised at the hearing subject to the following conditions:

1. prior to occupancy of the main level designated as business use under Section 10.4.1.a, the applicant shall submit to the Zoning Commission a description of the nature of the proposed business use and its related signage so that the Commission may determine whether it is in compliance with Sections 10.4.1.a and 16 and

2. written approvals for the proposed driveways

from both the state DOT (Rt. 202 access) and the First Selectman (Wilbur Road access) must be submitted prior to issuance of the permit.

By Mr. Owen, seconded by Mr. Shapiro, and

passed 5-0.

First Washington Capital, LLC./89 Lower Church Hill Road/Single Family Dwelling and Pool: It was noted the public hearing had been closed and the application was incomplete.

MOTION: To deny the application submitted by First

Washington Capital, LLC. for a single family

dwelling and inground pool at 89 Lower Church

Hill Road due to lack of information due to

the applicant's failure to provide the required

information specified in the 12/17/04 letter to

the applicant from Mr. Ajello, ZEO, and also

listed in the 1/24/05 ZEO Report, noting the

applicant may reapply when the required information is available. By Mr. Martin,

seconded by Mr. Owen, and passed 5-0.

(Motion approved, Application denied)

Other Business

Regulations for Viewshed Protection: Mr. Martin reported he had attended a Conservation Commission subcommittee meeting, which met to discuss prioritizing the geographical basis for viewshed protection regulations. He explained the high priority areas would be prominent points that could be seen by the greatest number of the public and the lowest priority would be those views that could be seen by only a few.

Revision of the Sign Regulations/Section 16: Mrs. Friedman noted she had emailed draft language to the Members. She received pertinent

feedback from Mr. Shapiro and will incorporate this in the draft prior to discussing it at the next meeting. She again asked the rest of the Commissioners for any input they might have. In addition, she reported a new internally lit sign had been erected at Dowler's Garage and a large sign put up at Soetheby's in Marbledale. She asked Mr. Ajello to investigate both.

Housing Diversity: Mr. Tagley, resident of Quarry Ridge, said based on his experience, he did not see a need for more condo units in Town. He said the spirit and nature of Washington is in its land and urged the Zoning Commission to draft the most restrictive regulations possible so the nature of the Town would not be disrupted. He advised the Commission to consult with the Land Use attorney about how restrictive these regulations could be. He said he and many others in Town were very concerned about the possibility of an inordinate number of condos being built in the residential district. He noted the Zoning Commission is the commission with the most control over what the Town will become and urged it to strictly control condominium development. Mr. Meyers, president of the Village of Bee Brook Condominium Assoc., also voiced his concern about the construction of condos in Town and noted some of the existing Bee Brook units did not comply with Building Code requirements. Mr. Martin thanked them for their views and advised them the Zoning Commission understands the complexity of this issue and has been discussing it for over a year. He pointed out that because 1) the Town Plan of Conservation and Development recommended that housing diversity be addressed and 2) the state statutes allow developers to bypass town regulations if they can't work with a town to build affordable housing, the Zoning Commission had begun consideration of this issue. He said the Commission thought the Town of Washington would have more control to ensure appropriate housing diversity projects if local zoning regulations permitted appropriately sited and scaled projects than if local regulations did not and developers were forced to by-pass local land use boards and apply under the State Affordable Housing Appeals Act. He noted that in November 2004, after much deliberation, the Commission had decided to work on regulations to permit multifamily housing in the commercial districts and to continue to investigate the possibility of expanding the area in which they would be permitted to the areas immediately adjacent to the commercial districts. He suggested the Zoning Commission might consider permitting housing diversity projects by Special Permit in specifically defined areas and according to specific criteria. A lengthy discussion followed, which included the following issues:

- Should a percentage of affordable units be required? While not all of the commissioners thought all projects should have to include affordable units, Mr. Owen noted that if the goal was to reach a temporary moratorium, which is possible under the state affordable housing appeals process, every development without affordable units would increase the threshold at which the moratorium could begin (because the number of affordable units needed for the moratorium is based in part on the ratio of affordable units to the total number of dwelling units in Town).
- What should the percentage of affordable units be required? Several commissioners favored a 30% requirement, but it was pointed out if that was the case there would be less incentive to developers to avoid the state appeals process. Mr. Boling suggested a compromise of 15% to 20% so the Town would get affordable units, but the developers would still have an incentive to apply through the Zoning Commission.
- Should the Commission establish a maximum number of dwelling units to be permitted under this regulation? Mrs. Friedman suggested Washington allow a certain number to be built and then abolish the regulation so it can be determined what effect those units already approved will have on the Town.
- Where should housing diversity development be permitted? For discussion purposes Mr. Martin circulated a colored map highlighting all areas within 1000 ft. of the business districts and within 3000 ft. of the business districts extending along state highways, but excluding the

area within 2000 ft. of the Lake Waramaug shoreline (as required by state statute.) This was in keeping with the Commission's November decision to consider including areas adjoining the commercial districts. Mr. Martin noted locating these developments in or near the business districts would be good for these districts and would follow the recommendation in the Plan of Conservation and Development to enhance the village centers. Mr. Martin also suggested the Commission could permit housing diversity projects in the Farming-Residential District on properties where there had been previous institutional uses such as schools, inns, municipal buildings, etc. since the neighboring properties would already be accustomed to a more intensive use.

Mr. Martin then asked each Commissioner to voice his opinion. Mrs. Friedman favored the approach shown on the map and also wanted a cap established on how many total units would be approved in Town. Mr. Owen supported the approach highlighted on the map and thought greater housing density in and around the business districts would be good for local businesses. He also thought issues like coverage and setbacks would have to be addressed and that it would be important to include a village concept in the design of each development. Mr. Brinton thought the Commission should move forward with increased multifamily housing density regulations even if the total number is not limited from the beginning. Mr. Abella agreed with Mrs. Friedman that there should be a cap on the total number of units permitted. He was also concerned with the scale of the projects, stating he would rather have three 10 unit developments than one consisting of 30 units. Mr. Shapiro liked the idea of allowing these units in the areas surrounding the business districts as well as in the districts themselves. Mr. Martin stated he supported allowing the parcel in question to determine the limitations of the project on a case by case basis. Mrs. Hill stated she would be more comfortable with the proposal if it required some affordable units. Mr. Owen, Mr. Abella, and Mr. Ajello agreed. Mr. Martin said he was encouraged by the positive reactions of the Commissioners. **It was the consensus of the Commission to continue the discussion of this issue and to work to draft language to permit housing diversity by Special Permit in the areas delineated on the map and on lots where the prior permitted use was non residential such as inn, school, or municipal building, as discussed at tonight's meeting.**

Communications

Mr. Martin noted Mr. Boling's draft Zoning Regulations for discontinued roads and Mr. Martin's 12/23/04 memo to the Board of Selectmen were sent to each Member in December. The Commission will await input from the Board of Selectmen.

Mrs. Hill noted the seminar, Ct. Land Use Law for Municipal Land Use Agencies, Boards, and Commissions would be held on 3/5/05. Having attended twice previously, she highly recommended it and urged the Commissioners to attend.

Mr. Martin noted the Commission had received a letter dated 1/24/05 from Mrs. Roberts, Planning Commission chairman, in support of Zoning's decision to address the issue of lighting in future revisions to the Regulations.

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

Mr. Martin adjourned the meeting at 10:04 p.m.

FILED SUBJECT TO APPROVAL

Janet M. Hill, Land Use Coordinator