

January 24, 2011

Present: David Owen, Lou Abella, Ralph Averill, Ray Reich, Gary Fitzherbert

Alternates Present: Harry Wyant

Absent: Andy Shapiro, A.J. Dubois

Staff Present: Janet Hill, Shelley White

Others Present: Mr. & Mrs. Boyer, Ms. Federer, Ms. Klauer, Selectman Solley, Mr. & Mrs. Afiouni, Ms. Coakley, Ms. Rowe, Mr. McDonough, Mr. & Mrs. Frank, Ms. Payne, Mr. Woodruff, Ms. Gager, Ms. Ebner-Martin, Mr. Ebner, Mr. & Mr. Werner, Mr. Odom, Residents

Mr. Owen called the meeting to order at 7:31 p.m.

PUBLIC HEARINGS

Seated: Mr. Owen, Mr. Averill, Mr. Fitzherbert, Mr. Abella, Mr. Reich

Revision of the Zoning Regulations/Section 4.4.19 and 21.1.69: Addition of Youth Camp as a Use Permitted by Special Permit in the R-1 District and Definition of Youth Camp:

Mr. Owen read the Legal Notice published in Voices on January 12 and January 19, 2011 and then read the list of contents that are in the file for this application. Mr. Owen read the proposed revision. He then read the Planning Commission's January 4, 2011 resolution (on file in the Land Use Office). The Planning Commission did not approve this revision(s) because it found that it is not consistent with the goals of the Town Plan of Conservation and Development and that the revision(s) is contrary to the goal of the preservation of rural character and Section 4.1 of the Zoning Regulations. Mr. Owen stated that the Zoning Commission could pass this revision only with super majority vote of at least 4-1 due to the Planning Commission's denial. Mr. Owen read the comments from Mr. McGuinness of the Northwest CT Council of Governments dated 12/6/10 (on file in the Land Use Office).

Mr. Owen requested any comments or questions from the public.

Mr. Frank of the Planning Commission spoke on behalf of the Planning Commission and stated that "it is our view that this is a limited problem dealing with a specific site" and that the Planning Commission does not believe that this requires a town wide solution. He briefly explained the Planning Commission's views of this revision and asked that the Zoning Commission develop a narrower regulation that would not affect the entire R-1 district, but allow the existing camp to expand.

Mr. Owen discussed the background of golf courses being a use permitted by Special Permit and how the regulations were written. He stated that the Zoning Commission knew what a golf course is but in the case of this revision, it needed to define 'Youth Camp.' He stated that he feels the Commission produced a very restricted definition and any applicant would have to meet the Special Permit requirements. Mr. Owen stated that a youth camp is in keeping with the Town's rural character and this revision would allow it to grow with and adapt to the changing times. He stated an alternative approach would be to adopt a regulation regarding the expansion of a nonconforming use. Mr. Owen read language regarding expansion of non conforming uses that Atty. Zizka helped develop for the Town of Coventry. He stated that

the Washington Zoning Regulations do not mention all the uses that are valued in this Town and that however the regulation is revised, a definition of 'Youth Camp' would be necessary.

Mr. Boyer asked if the Commission had received any indication that there is an interest in a new camp in Town. "And, if not, why bother?" He stated that the regulations should take care of the existing camps. Mr. Owen stated that State Statute requires that regulations be created to apply universally in the town. Mr. Boyer asked if it would be possible to grant the extension without a new regulation. Mr. Owen stated that the extension would not be possible without a new regulation. Mr. Boyer suggested that a regulation should be created for an existing youth camp to expand. He stated that he doesn't feel that the new regulation should encompass the whole R-1 District.

Mrs. Boyer stated that she always thought this was a summer youth camp and she is curious as to why 'year round' and 'adults' were mentioned. Ms. Ebner stated that they currently operate 11 weeks of the year but would like to provide a 'nature's classroom' type of program for environmental education year round. She stated that they would like to open it up to the surrounding schools in the spring and the fall for these classes. Mr. Owen stated that there was no intention to have adult programs at the camp and that was just mentioned in Mr. McGuinness's comments. Ms. Ebner stated that she feels that maintaining the integrity of the property would be better than subdividing it.

Second Selectman Solley asked if the Zoning Commission sought Atty. Zizka's advice as to what language would work best for this regulation. Mr. Owen stated that Atty. Zizka was not in favor of allowing a single existing non conforming use and that he recommended creating a regulation that allows for an extension of all non conforming uses by Special Permit. Mr. Owen stated that he feels that it would be very difficult for a non existing camp to meet all the Special Permit requirements. Mr. Solley stated that he supports the Planning Commission's opinion and feels that the Zoning Commission should create a more in depth definition of 'Youth Camp' and not subject the entire R-1 district to the potential of camps, however unlikely that may be. Mr. Owen stated that once again, he feels that the applicant would have to go through the entire Special Permit process and it would be very difficult to meet these criteria.

Ms. Frank stated that she feels it is the Zoning Commission's job to protect property owners so that adjoining property owners cannot infringe on each other's rights. She stated that the 40 acre requirement in the proposed definition of 'Youth Camp' sounds like a lot but not inconceivable for this area and she does not feel it would be a barrier for someone who wanted to start a Youth Camp. She stated that these camps have large trucks delivering items that would possibly be traveling down narrow rural roads and that would change the quality of the neighborhood while the camp was in operation. She stated that the Zoning Commission is opening up the likelihood of this being allowed with this revision. Mr. Owen read the Special Permit requirements and he agreed with Ms. Frank that the Zoning Commission and Regulations should protect property owners.

Mr. Frank stated that he feels that the Zoning Commission should ask itself whether or not this is an appropriate use in the R-1 District. He read the other uses that are permitted in the R-1 District. He stated that summer camps are not quiet, bucolic operations.

Mr. Fitzherbert stated that he feels the Zoning Commission is apprehensive about creating site specific zoning regulations and does not feel that it would benefit the Town. He stated that he was conflicted after hearing everyone's opinion.

Mr. Reich stated that he was concerned with the Zoning Commission creating a regulation that would include the entire R-1 District for this one issue. He stated he was content with considering addressing the current applicant's issues.

Mr. Owen stated that the Commission could continue this hearing and consult with Atty. Kari Olson. He stated that he could ask what the legal ramifications would be if a line were added in Section 4 allowing expansion of an existing Youth Camp and a definition of 'Youth Camp'. Mr. Owen stated that he could also ask Atty. Olson about a broader regulation regarding the expansion of non conforming uses.

Mr. Abella stated that he felt the Commission should consult with Town Counsel and outline the Planning Commission's suggestions. He stated that he feels the revision should concentrate on existing camps.

Mr. Averill stated that he gives a great deal of weight to the Planning Commission's recommendations, but he also understands the apprehension of being too specific. He stated that both approaches to the revision make a lot of sense but he is unsure at this point.

Mr. Owen stated that he would seek further guidance from Town Counsel.

There were no further comments or questions.

Motion:

To continue the Public Hearing to consider the Revision of the Zoning Regulations/Section 4.4.19 and 21.1.69: Addition of Youth Camp as a Use Permitted by Special Permit in the R-1 District and Definition of Youth Camp at the February 28th Zoning Meeting at Bryan Memorial Town Hall,
by Mr. Owen, seconded by Mr. Fitzherbert, passed by 5-0 vote.

REGULAR MEETING

Consideration of the Minutes

The minutes of the November 22, 2010 Zoning Commission Meeting were considered.

Corrections:

Page 9:

Under Wykeham Rise, LLC./101 Wykeham Road/Special Permit: Section 4.4.10/School:
8th sentence should read: Mr. Owen said that after consulting with Atty. Zizka in connection with a previous application he concluded that the grass pavers leading to Pond No. 1 should not be part of the lot coverage calculation.

Motion:

to accept the Zoning Meeting Minutes of November 22, 2010, as corrected,
by Mr. Owen, seconded by Mr. Averill, passed by 5-0 vote.

The minutes of the December 27, 2010 Zoning Commission Meeting were considered.

Motion:

to accept the Zoning Meeting Minutes of December 27, 2010, as submitted, by Mr. Owen, seconded by Mr. Averill, passed by 5-0 vote.

Pending Application(s) Dobson/217 New Milford Turnpike/Special Permit: 10.4.1/Sign:

The applicant requested an extension until the Zoning Commission's Regular Meeting on February 28, 2011 at Bryan Memorial Town Hall. Extension was granted.

New Application(s)

Rowe-McDonough/38 Kielwasser Road/Special Permit: Section 13.14/Bed and Breakfast Establishment:

Ms. Rowe and Mr. McDonough were present. Ms. Hill stated that the applicant needs to submit a floor and that she would contact the applicants if anything else is needed before the public hearing.

Motion:

to schedule a Public Hearing on February 28th at Bryan Memorial Town Hall, to consider the application for Rowe-McDonough/38 Kielwasser Road/Special Permit: 13.14/Bed and Breakfast Establishment, by Mr. Owen, seconded by Mr. Fitzherbert, passed by 5-0 vote

Other Business

Proposed Cell Tower at 17 Warren Road:

Mr. Owen stated that he was aware that residents were present to speak about the proposed cell tower at 17 Warren Road. He reminded everyone that the Zoning Commission, despite what is in the regulations, does not have any authority over cell towers. He stated that the state statute does say that the Siting Council must consider the Town's location preferences based on the Town's Zoning Regulations.

Ms. Coakley stated that she is part of the neighborhood group that is opposing the proposed tower. She stated that the Zoning Commission represents them and she urged them to talk to AT&T at the informational meeting on Saturday (1-29-11) and tell them that the proposed tower violates 11 sections and 31 components of the Zoning Regulations.

Mr. Owen stated that it has been argued in the past that the whole section of 13.19 in the Zoning Regulations dealing with telecommunication structures should be condensed and have the Zoning Commission adopt the new language so that the Town would have something concrete. Ms. Payne, Conservation Commission Chair, stated that in 2007 she and Selectman Sears asked that Mr. Owen not delete Section 13.19 of the Zoning Regulations because it expresses where the Town stands on this matter. She stated that it reflects the POCD and the information that is in the Natural Resource Inventory Report. Ms. Payne stated that she feels it is in the best interest of the Town that the Town commissions support the Town regulations and the philosophy of the Town.

Ms. Coakley stated that the proposed tower is a 180-foot tower; it is less than 400 feet away from a home, and within 1500 feet of the Washington Montessori School. She asked the Commission if it thought that this was preserving the rural character. Ms. Coakley stated that the Town needs the Zoning Commission to support them and that it should speak at the Town informational meeting on Saturday. Mr. Owen stated that he did not think this proposed tower preserves the rural character but he agrees with Town Counsel that the Zoning Commission has no authority over cell towers.

2nd Selectman Solley stated that the Board of Selectman has written letters to the Siting Council in the past opposing proposed cell tower sites. He stated that the Selectmen will be writing a letter to the Connecticut Siting Council opposing the location of the proposed 17 Warren Road tower because there are areas of concern with this proposed site such as the height, and the access road excessively exceeds the maximum grade that is allowed by Zoning. He stated that he personally opposes the proximity to the Montessori School. Mr. Solley stated that, as of this time, the Selectmen have not developed an opposition standard for the proposed cell tower and that he would like to hear what is said at the informational meeting with AT&T and the Town on Saturday, January 29, 2011. Mr. Owen stated that the Selectmen's letter would represent the Town position and they could cite the Town regulations. He stated that the telecommunications company does not have to apply to the Zoning Commission because it applies to the Connecticut Siting Council. Ms. Werner of the Washington Montessori School stated that they would like the support of the Zoning Commission and would like someone from the Commission to speak. She stated that they have worked with consultants and have come up with alternate sites that would not affect the neighbors like this one would. Mr. Fitzherbert volunteered to be at the meeting on Saturday. He stated that he would speak personally and that he recalls that when the regulations for cell towers were drafted that the figure of "at least 1500 feet" from a school was what was figured to "err on the side of caution" to keep children safe. Mr. Owen stated that the CSC is supposed to consider the Town regulations when siting a tower but the Town has limited input. He stated that the State Law was written to give the municipalities less power. Mr. Owen recommended that the Town have a written position that states where the Town would like to place cell towers. He stated that in the Zoning Regulations it states that the Zoning Commission cannot impede the spread of national telecommunications. Ms. Payne stated that the Town "should at least try." Ms. Frank questioned the steep driveway. Mr. Solley stated the Selectmen usually approve driveways but this one was not approved by them. Ms. Frank asked if fire trucks would be able to get to the tower if there was an emergency.

Mr. Odom stated that he lives 350 feet from the proposed tower. He stated he did not realize how tall it would be until he saw the balloon test. He asked that the Zoning Commission draft a letter saying that the proposed site does not comply with zoning regulations. He stated that he is "terrified" that the tower would catch fire and a fire truck would not be able to make it up the driveway.

Mr. Afiouni stated that Verizon has existing infrastructure behind the Citgo station in Marbledale. He stated that AT&T has stated that this tower would provide coverage up Route 202 and 341 and it would also like to lease out to other companies and make money. Mr. Afiouni stated that it is his understanding that AT&T has had the right to co-locate on the tower in Marbledale. He stated that the Coakleys did a drive test and found that they had coverage in the area. Mr. Owen stated that they would need an engineering study, which would provide the hard numbers that would show coverage in the area and prove that this tower is not necessary. He stated that he feels a reasonable strategy for the Town would be to develop a plan that indicates specific locations for towers and then create concise regulations.

Mr. Werner stated that he was concerned that the tower would be at a high elevation and very visible. He stated that he thought the tower in Marbledale was appropriately located and he hadn't noticed it for years. Mr. Reich stated that he thought cell towers are inevitable and there should be a group in town that could develop a report that indicates cell tower sites that everyone could live with. Ms. Coakley stated that

she believed this was recommended in 2005 and was never done.

Ms. Payne stated that she was told that AT&T had requested to increase the height of the tower in Marbledale from 130 ft. to 170 ft. Mrs. Afioni stated that the Town should be cautious in allowing such tall towers and that the telecommunication companies will eventually want these tall towers all over Town.

There was a brief discussion regarding future technology and whether cell towers would be needed.

Possible Revision of the Zoning Regs re: Excavation:

Ms. Hill distributed a sample of options that could be used to revise the zoning regulations regarding Excavations. This will be discussed at the next meeting.

Enforcement

Mr. Woodruff stated that he feels that the Zoning Commission is for the protection of the property owners and their rights. He gave a history of his communications with the Land Use Office regarding his complaint about alleged violations on the Smith property at 35 East Shore Road. He stated that his neighbor has violated many Zoning Regulations and he wants to see the violations corrected. The Commission and Mr. Woodruff discussed his requests. Mr. Owen stated that he thought a meeting should take place with himself, Mr. Woodruff, Mr. Ajello, Ms. Hill, Mr. Woodruff's Neighbor and Town Counsel. Mr. Woodruff recommended that Mr. Jenks, Building Official, and a commissioner from the Inland Wetlands Commission attend as well. Mr. Owen asked Mrs. Hill to consult with Atty. Olson.

Ms. Hill stated that Ms. Smith has Brian Neff, Engineer, working on an application for a variance for the shed.

Communications

Ms. Hill stated that the Land Use Office has received two appeals of the Zoning Commission's approval of the Wykeham University application.

Adjournment

Motion:

to adjourn at 9:30 pm.

by Mr. Owen, seconded by Mr. Averill, passed by 5-0 vote.

Mr. Owen adjourned the meeting.

SUBMITTED SUBJECT TO APPROVAL:

Shelley White, Land Use Clerk