

January 25, 2010

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

Alternates Present: A.J. Dubois, Harry Wyant

Absent: Andy Shapiro, Alt.,

Staff Present: Janet Hill, Shelley White

Others Present: Bob Papsin, Dirk Sabin, Matt Klauer, Wendy Federer, Phil Dutton, Jim Brinton, Barb Cheney, Frank Monteleone, Rocky Tomlinson, Linda McGarr, Chris Charles, Christopher Peacocke, Stephen Lasar, Ms. Wrabel, Drew Stichter, Anthony Martino, Residents

Mr. Owen called the meeting to order at 7:33 pm.

PUBLIC HEARINGS

Seated: Mr. Owen, Mr. Reich, Mr. Averill, Mr. Abella, Mr. Dubois, Alt. (for Mr. Fitzherbert)

Lancaster/244 West Shore Road/Special Permit: Section 6.4.6/Fences on the Lake Side of West Shore Road:

Ms. Hill read the legal notice published in Voices on January 13 and January 20, 2010. Mr. Owen read the list of documents on file for this application.

Mr. Fitzherbert arrives and is seated.

Mr. Papsin was present as agent for Mr. Lancaster. He submitted certified mailing receipts and photos of the property. The photos indicate the height of the fences from various locations of the property from the center of the road and the edge of the lawn. Mr. Papsin explained that the property is on a dangerous corner and the property owner has small children and would like to install a picket fence at the front of the property and a split rail fence along a portion of the side of the property. He explained that the Department of Transportation approved the setback of the fence and he submitted a map from Terence Phelan, Permit Inspector of the D.O.T, indicating the fence location. The Commissioners looked at the Site Analysis Plan, prepared for John Lancaster, 244 West Shore Road, by Brian Neff, Engineer, dated 10-15-07, which indicated the location of the picket fence (drawn in by hand) to be 11 feet off the road. Mr. Owen read the Administrative Review, by Ms. Hill, dated 1/25/10. Mr. Papsin stated that Mr. Manse of West Shore Road called to state he had no objections to the proposed fences. Mr. Owen read a letter from Ms. Leila Klein, (on file in the Land Use Office) stating that she objected to the proposed fences and wanted the view of the lake preserved. The Commissioners discussed the obstruction of the view of the lake and the height of the proposed fences. Mr. Papsin stated there is a small area that is usually overgrown with vegetation that would possibly be affected. The commissioners examined the copies of photos that indicate the height of the pickets from the roadside and other locations. There were no further questions or comments from the public.

Motion:

to close the Public Hearing to consider the Special Permit Application submitted by Lancaster, under section 6.4.6 for Fences on the Lake Waramaug Side of West Shore Road to install fences at 244 West Shore Road, by Mr. Abella, seconded by Mr. Reich, by 5-0 vote.

REGULAR MEETING

Mr. Owen called the regular meeting to order at 7:45 p.m.

Consideration of the Minutes

The December 28, 2009 Zoning Commission Regular Meeting Minutes were considered:

Corrections:

Page 1: under Present: Valerie Anderson should read: Valerie Friedman

Page 4: under Possible Revision of the Zoning Regulation/Section 13.9/To Allow Inns on Town Roads:, First line should read: Mr. Owen stated that Mr. Fitzherbert and Mr. Averill had a subcommittee meeting to discuss regulations concerning inns.

Page 5: Delete: Mr. Owen stated that the Town or State road was not the issue at the moment but an inn in a R-1 District.

Motion:

to accept the Zoning Meeting Minutes of December 28, 2009, as amended,
by Mr. Owen, seconded by Mr. Reich, by 5-0 vote.

Pending Application(s)

Lancaster/244 West Shore Road/Special Permit: Section 6.4.6/Fences on the Lake Side of West Shore Road:

There were no additional comments or questions from the Commissioners.

Motion:

to approve Special Permit Application: Section 6.4.6 submitted by Lancaster at 244 West Shore Road for Fences on the Lake Waramaug Side of West Shore Road to install fences at 244 West Shore Road,
by Mr. Reich, seconded by Mr. Averill, by 5-0 vote.

New Application(s)

Schoellkopf/300 Nettleton Hollow Road/Special Permit: section 13.17/Town Landmark Site:

Mr. Dirk Sabin, Landscape Architect was present to discuss Mr. Schoelkopf's application. Mr. Sabin gave a brief history of the property known as Hollister House. He stated that Mr. Schoelkopf has entered an agreement for the National Garden Conservancy to inherit the property upon his passing, which they will then run as a fine garden. In addition, there are plans to run the property as a historic homestead. He stated he has come to the Zoning Commission as the first step before making any further applications to the Town for such things as public bathrooms. He has submitted surveys indicating all the buildings and their locations and the gardens on the property. Mr. Sabin stated that they have received approval for historic designation from the State of Connecticut and are pursuing Federal designation. The Commissioners and Mr. Sabin discussed what else was needed for his application to be complete. Mr. Owen read section 13.17.8 of the

Zoning Regulations, which states what the application should include, in addition to the general requirements for Special Permits. There were no further questions or comments.

Motion:

to schedule a Public Hearing on February 22, 2010 to consider the Special Permit Application submitted by Schoellkopf/300 Nettleton Hollow Road/Section 13.17/Town Landmark Site,
by Mr. Owen, seconded by Mr. Averill, by 5-0 vote.

Mr. Reich asked if there would be any impact on the Town's property income structure. Mr. Sabin stated that the taxes on the property are paid and that upon the passing of Mr. Schoellkopf an endowment has been set up for maintenance, however, he does not know what the tax ramifications would be when the property is under the ownership of the National Garden Conservancy.

Other Business

Possible Revision of The Zoning Regulations/Section 12.14 Re: Special Exceptions for Generators and Other Noise Generating Equipment:
Zoning Board of Appeals has not submitted a response as of the time of this meeting.

The Commissioners agreed to move item B. on the agenda after item D. Election of Officers.

Election of Officers:

Mr. Reich stated the following nominations for officers of the Town of Washington Zoning Commission:
Mr. David Owen, Chairman, Mr. Gary Fitzherbert, Vice Chairman, and Mr. Ralph Averill, Secretary.

Motion:

to nominate David Owen as Chairman, Gary Fitzherbert as Vice Chairman and Ralph Averill as Secretary of the Town of Washington Zoning Commission,
by Mr. Owen, Seconded by Mr. Abella, by 5-0 vote.

2010-2011 Zoning Commission Budget:

The Commission considered the draft of the Zoning Commission Budget and there was a brief discussion. There were no objections. Mr. Owen authorized Ms. Hill to submit the budget to the Selectman's Office.

Revision of Zoning Regulations/Eating and Drinking Establishments in the New Preston and Depot Business Districts by Special Permit:

Mr. Owen read a proposed revision to section 21.1.24/2.3.2.g/12.6.1.10/15.2 (on file in the Land Use Office). Ms. Hill suggested that the word cars be changed to vehicles in section 21.1.24.

Motion:

to schedule a Public Hearing on March 22, 2010 to consider the Revision of the Zoning Regulations Re: Definition of "Eating and Drinking

Establishment” – “Restaurant”,
by Mr. Averill, seconded by Mr. Abella, by 5-0 vote.

Possible Revision of the Zoning Regulations/Section 13.9/To Allow Inns on Town Roads:

M. Owen talked about correspondence to the Zoning Commission from the public. He stated that any written correspondence goes directly into the file and is part of the public record. He suggested, in order to cut down expenses to the Town, that people provide 12 copies of their correspondence to the Land Use office, which will then be distributed to all commissioner, staff and one file copy. He recommended that emails not be sent because spam, viruses and large PDF files may make the email undeliverable or unable to be opened. He stated that there will always be this type of correspondence with attorneys, but when possible it should be avoided. There was a brief discussion regarding establishing a policy. Mr. Owen stated that he and Ms. Hill would work on establishing a new policy after consulting with the Town's attorney.

Mr. Owen distributed a draft regarding defining 'inns'. He stated that this draft could be a place to start the discussion and the numbers indicated were just examples and there were still a lot of questions to be answered. He suggested that the Zoning Commission should produce a general definition of an 'inn,' remove section 13.9, eliminate the term 'tourist home' and then in each of the districts that the Commission decides that inns would be a permitted use, list under Uses Permitted by Special Permit under the section regarding inns, specific requirements for that district. Mr. Averill asked what 'small' means in this definition. Mr. Owen stated that there would not be a single template for the entire Town. He stated that there might be an 'inn' that would be appropriate for one district but not appropriate in another district of the town. Mr. Averill stated that he was trying to look at it from the applicant's point of view. Mr. Owen stated that the requirements for each district would be listed under that district's Uses Permitted by Special Permit section. He stated that the Zoning Commission would still be required to make discretionary judgments regarding neighborhood impact and rural character. Mr. Averill stated that the more vague the regulations are that the Commission would be required to make more discretionary decisions and the applicant would have more 'wiggle room' legally. Mr. Owen stated that, in his opinion, the definition should be general enough to cover the entire town and the specifics would be listed under the regulations for each district. Mr. Averill stated that he was concerned that allowing commercial establishments, such as spas, tavern, gift shops and eating and drinking establishments in the R-1 or R-2 districts, which are not permitted by themselves but would be permitted under the business of an inn. He questioned why it would be okay to allow these businesses under an inn when it would otherwise not be allowed. Mr. Abella stated that these are secondary to the inn. Mr. Averill asked how that could be determined. Mr. Owen read his proposed definition of an inn, dated January 25, 2010. He stated that this definition was consistent with what the Town has treated as an inn in the past. Mr. Dubois stated that the Mayflower is not an inn, it's on a state road and he did not agree with using it as a template for a definition of an inn on a town road. Mr. Owen stated that the town road issue is separate and could be specified in the regulations of each district. There was a discussion regarding inns on town roads. Mr. Owen stated that the Town has consistently treated the Mayflower as an inn. He stated that if inns are permitted in a residential neighborhood that the facility has to be a lodging facility first and foremost and the other entities of the business could be regulated by size, similarly to how accessory apartments are regulated. There was a brief discussion regarding how the size would be regulated. Mr. Fitzherbert stated that he likes the concept of specifying requirements under each district as well as maintaining the Special Permit process. There was a brief discussion as to whether this would be a possible framework that the Zoning Commission would be able to work with. Mr. Fitzherbert stated that he would still like to address the issue of inns on town roads separately. Mr. Owen stated that this issue could be addressed in the definition of an 'inn' or the Commission could address the issue another way. There was a brief discussion regarding the Mayflower Inn and its expansion over the

years. Mr. Reich stated that the Mayflower did not have to go through all of these specifics to get to where they are today. Mr. Owen stated that he would not be in favor of changing the requirements in the regulations that would result in making the Mayflower non-conforming. There was a brief discussion regarding how the size of a secondary business of an inn would be regulated. Mr. Fitzherbert stated that he sees two issues: 1. Inns on a town or state road, changing section 13.9 in the Regulations to what it was, and 2. Zoning should have a definition of an 'inn'. He stated that he does not see that the Zoning Commission is near to agreeing what the definition of an 'inn' and he questions whether the two issues need to be discussed as one. Mr. Owen stated that Mr. Fitzherbert made a motion to change 13.9 to what it was and then withdrew it. Mr. Owen stated that Mr. Fitzherbert could put the motion back on the table. Mr. Fitzherbert agreed to work with Mr. Owen's draft. Mr. Owen stated that he would prefer to deal with all of this at once. (Mr. Averill explained that the 2008 revisions of section 13.9 were clarifications only regarding the intent of this Zoning Regulation.) Mr. Fitzherbert asked if quick, special meetings could be held or if this process would take six months to a year to finish. Mr. Owen stated that special meetings would be possible. Ms. Hill suggested that the Zoning Commission make comments regarding all the points indicated on Mr. Owen's draft of Inns, add and delete items as they see necessary and submit them to her. She stated that she would collate and compile them and bring them to the next meeting.

Privilege of the Floor

Mr. Chris Charles stated that there is a list of inns that have previously been in Town and he has not seen it and feels it would be helpful. He stated that he has gone through the letters that have been submitted to Zoning in the past month and 75 % of the inns that are mentioned as examples are not inns that are in Washington. He stated inns such as the Cogswell Tavern are never mentioned. He stated that the Zoning Commission reviews the previous meeting minutes but the Z.C. does not check the minutes of the previous meeting against the minutes 'of a month, or two, or three before that.' He stated that he realizes this would be difficult but, it is his perception, over the past six months, that 'statements were made that are inconsistent with statements made at an earlier meetings' and in order to move on with the discussion of the 'inns' he feels it would be helpful if a lot of these ambiguities were cleared. He stated that it would be helpful for the general public to know if the Commission would state whether it was a change in the regulation or a clarification. Mr. Owen stated that, in the opinion of the Town's Attorney, that this issue was 'unsettle-able'. He stated that there are statements that could be clarified and otherwise these statements tend to mislead the public. Mr. Charles stated that he would submit specific statements for the Zoning Commissioners to address. He stated that he feels the Zoning Commission's current discussions tend to 'slide back and forth between the discipline of being a Zoning Commission and the discipline of the Planning Commission'. He stated the Z.C. has discussions of economic development, which is the responsibility of the Planning Commission. He stated that he did not think that anyone from the Zoning Commission has a background in inns or hotels. He stated, "There is no practical, real world expertise on the Zoning Commission." He stated, that in his opinion that he didn't think that the Zoning Commission could state for a fact, how big an inn should be, or determine how it would impact a certain property. He stated that he feels that the Zoning Commission should be consulting with an advisor regarding inns.

Ms. Linda McGarr thanked the Zoning Commissioners for their volunteer work. She asked how an Eating and Drinking Establishment is differentiated from a Bed and Breakfast. Mr. Owen stated that there are definitions for both Eating and Drinking Establishment and Bed and Breakfast and the definition of an Eating and Drinking Establishment would not cover a Bed and Breakfast.

Ms. Wrabel stated that she felt the language she is hearing at the meetings could be characterized as retrospective and would like to urge the Commissioners to be more forward looking. She stated she likes Mr. Owen's draft regarding concepts of inns but was concerned about using

the Mayflower as a template for a definition and that the possible risks to the Town should be considered and efforts to protect the Town from these possible risks. Mr. Owen stated that the Zoning Commission does try to work for the long-term health of the Town. Mr. Fitzherbert stated that the Town would need to adapt for the future.

Mr. Phil Dutton stated that it should be made public that Ms. Peacocke is an intervener against the proposed inn and currently is in appeal against the most recent proposal of the property. He stated that he thought Mr. Charles' idea for the Planning Commission and Zoning Commission to put together a feasibility study and hire experts on inns is 'preposterous'. He stated that an entrepreneur would use their money to conduct a feasibility study and that it would be a 'slippery slope to start to have the Town thinking about regulating business from that standpoint.' He stated that the Town should seriously think about the capacity for a commission to over regulate the potential outcome.

Mr. Anthony Martino asked if there is in the Regulations about resorts and how they differ from inns and hotels, etc. Mr. Owen stated that there is nothing in the Regulations. Mr. Martino asked what would happen if an applicant changed the name of the business from inn to resort and resubmitted. Mr. Owen stated that resorts are not permitted and per the Zoning Regulations, if it's not listed as permitted, it's not allowed.

Mr. Drew Stichter stated how an entrepreneur could improve a property even if the business does not survive. Mr. Owen agreed and stated that the Zoning Commission's job is not to evaluate whether a business will be successful.

Mr. Christopher Peacocke asked if the draft definition of inns would be on the Town Website. Mr. Owen stated he was not sure, but it would be in the file that is available to the public.

Mr. Stephen Lasar stated that he was concerned with the Z.C. using the Mayflower as a template for the definition of an 'inn'.

Communications

There were no communications to discuss.

Enforcement

Mr. Owen asked that the Commissioners look at Mr. Ajello's Zoning Enforcement Report dated 1/25/10.

Adjournment

Motion:

to adjourn at 9:35 pm by Mr. Fitzherbert, seconded by Mr. Averill, by 5-0 vote.

Mr. Owen adjourned the meeting.

SUBMITTED SUBJECT TO APPROVAL:

Shelley White, Land Use Clerk