

January 28, 2008

MEMBERS PRESENT: Mr. Abella, Mr. Averill, Mt. Fitzherbert, Mrs. Friedman, Mr. Owen

ALTERNATES PRESENT: Mr. DuBois, Mr. Wyant

ALTERNATE ABSENT: Mr. Shapiro

STAFF PRESENT: Mr. Ajello, Mrs. Hill

ALSO PRESENT: Mr. Neff, Mr. Gitterman, Mr. Fairbairn, Mr. Boling, Atty. Ebersol, Mr. Fowlkes, Mr./Mrs. Boyer, Mr. Sears, Mr. Williams, Ms. Stevens, Mrs. Arturi, Mrs. Ward, Mr. Hileman, Mrs. Condon, Mrs. Matthews, Mr. Tagley, Mrs. Watkins, Mr. Allen, Mrs. Brown, Mr. Woodruff, Mr. Charles, Atty. Fisher, Atty. Zizka, Atty. Pocius, Mr. Papsin, Ms. LoPresti, Mr. Rinaldez, Mrs. McDonald, Ms. Curtis, Mr. Kiss, Residents, Press

Mr. Owen called the meeting to order at 7:30 p.m. and seated Members Abella, Averill, Fitzherbert, Friedman, and Owen. He noted the order of the agenda would be changed to give anyone who wanted to speak about the proposed revisions to Section 13.11 regarding accessory apartments the opportunity to do so prior to the Myfield public hearing.

PUBLIC HEARINGS

Revision of the Washington Zoning Regulations/Sections 13.11.1, 13.11.2, and 13.11.3/To Permit Only One Accessory Apartment Per Property

Mr. Owen reconvened the public hearing at 7:31 p.m. He noted the hearing would be continued to Monday, March 24, 2008 and that the proposed revisions would be referred to the Planning Commission and councils of government as required by the state statutes.

MOTION: To continue the public hearing to consider revisions to the Washington Zoning Regulations/Sections 13.11.1, 13.11.2, and 13.11.3 to permit only one accessory apartment per property to Monday, March 24, 2008 at 7:30 p.m. in the Land Use Meeting Room, Bryan Memorial Town Hall. By Mrs. Friedman, seconded by Mr. Fitzherbert, and passed 5-0.

At 7:32 p.m. Mr. Owen continued the hearing to 7:30 p.m. on March 24, 2008.

Myfield, LLC./7 Mygatt Road/Affordable Housing Per CGS 8-30g

Mr. Owen called the public hearing to order at 7:33 p.m. Mrs. Friedman read the legal notice published in **Voices** on 1/16 and 1/23/06. Mr. Owen read the list of all of the documents in the file and the 1/28/08 ZEO Report, which stated that the certified mailing receipts had not been submitted. Mr. Boling submitted 36 certified mailing receipts.

Mr. Gitterman read his introductory statement dated 1/28/08.

When Mr. Boling began to speak on behalf of the applicant, Atty. Zizka, Commission counsel, noted he had previously represented Mr. Boling on another matter, and although this was not a traditional conflict of interest, he thought he should note it for the record. He asked then if either the applicant or the Commission objected to him continuing to represent the Commission. Atty. Ebersol, Mr. Boling, and the Commission said they had no objections.

MOTION: The Washington Zoning Commission has no problem with Atty. Zizka continuing to represent it regarding the Myfield, LLC. affordable housing application given that he has represented Open Space Equity in the past and may do so in the future. By Mr. Owen, seconded by Mrs. Friedman, and passed 5-0.

The map, "Site Layout," by Mr. Worcester, revised to 12/16/07 was reviewed.

Mr. Boling noted the previous application had been approved for thirteen identical units. The current application, he said, would introduce enhancements to make the project more aesthetically pleasing. He pointed out how the orientation and placement of some of the buildings changed, that more landscaping buffers were proposed, and that there were now a greater variety of unit types. He noted an additional building was proposed to the north of the existing driveway entrance. He also stated that the conservation easement area on the property had been increased to include 80% of the site and the proposed impervious surfaces would decrease to 9%.

Mr. Boling provided details about the different types of units. Buildings #1 - #3 would each have two 940 sq. ft. apartments, one per floor. The apartments would vary slightly due to variations in the ingress and egress of each; the ground level units would have access to the basement, whereas the upper units would include the unfinished area over the garage. Two of these six units would be affordable; one on the first floor of Building #2 and one on the second floor of Building #1, so that there would be an affordable unit for each floor plan. These units would have one bedroom. Mr. Owen noted each unit would have access to unfinished space and asked if this was included in the square footage. Mr. Boling said it was not. The rest of the buildings would be 1980 sq. ft. single family dwellings, each with two bedrooms. Buildings #5, #7, and #9 would be affordable. Mr. Boling stated that all of the units would be fully finished and functional and that the purchasers could select from available options. Mr. Owen asked if all of the options were detailed in the material submitted. Mr. Boling said that standard unit specs for purchasers who did not want to make their own decisions had been submitted. Mrs. Friedman asked if purchasers could choose finishes and make changes to the floor plans. Mr. Boling said they could, but the choices had to be within their construction budget and any changes to the floor plans could not decrease the number of bedrooms or the sq. ft. of the finished floor area. Mr. Gitterman added that interior changes could be made, but no change that would affect the footprint of any building.

Mrs. Friedman asked if any moderately priced units would be offered. Mr. Boling said the smaller sized market rate units might qualify for CHAFA mortgages, but that was not known at this point and the owners would have no control over this matter.

Mr. Boling noted the two buildings proposed along Mygatt Road would screen the rest of the development behind them.

Mr. Boling reviewed the floor plans, Sheets A-1 - A-12 by Mr. Worcester, revised to 12/16/07. He noted subtle differences between each proposed building that provided architectural variety, but said each unit type would have essentially the same sq. footage. Mr. Owen noted

that in previous promotional material market rate buyers would have the opportunity to increase their living area by finishing the basement. He asked if this was still an option. Mr. Boling said that buyers of both the affordable and market rate units could do so. Mrs. Friedman asked if the option was still available to locate the master bedroom on the first floor. Mr. Boling said that the modular construction made this a possible option. Mr. Gitterman briefly detailed the modular construction technique.

Mrs. Friedman noted that changes could be made within the budget for each unit, but asked how future buyers would be kept within the affordable guidelines when they make further changes. Mr. Gitterman said that for the affordable units, the owner would be able to recoup only a percent of his investment set by state statute.

Mrs. Friedman asked if interior floor plan changes that would affect exterior features such as doors and windows would be allowed. Mr. Gitterman said that window changes would not be permitted on certain walls due to privacy concerns. Mr. Boling thought the most likely window changes would be on the side or back of the units or that due to the change in the location of the kitchen, the front windows might be lengthened.

Mr. Owen asked if there could be changes that would alter the number of bedrooms or bathrooms. Mr. Boling said that the number of bedrooms could not be increased in any of the units and could not be decreased in the affordable units.

Mrs. Friedman asked how the budget for the affordable units would be determined. Mr. Boling said it would be determined by Myfield, LLC. He noted that no unit owner would be able to make modifications that would result in an affordable unit becoming uninhabitable or not fully finished.

Mr. Abella noted the current application was for three more units than the number originally approved. Mr. Boling said this was true, but that the total number of bedrooms was the same.

Mr. Ajello asked if air conditioning would be advertised as an option. Mr. Boling said it would. It was noted it would be difficult to install air conditioning in existing unit #5 because it has no duct work, but Mr. Boling stated that the rest of the units would not be built until there was a buyer who would choose his own options.

Atty. Zizka asked if it had been decided which of the units would be priced at 60% and which at 85% and if of the five affordable units, three would be priced at 60% and two at 80%. Mr. Boling said this had not yet been determined.

Atty. Pocius said he had been asked to summarize his correspondence to Atty. Zizka and made a lengthy statement on behalf of the applicant. He included the following points: 1) Regarding the issue of customization, in this case reasonable profit comes from a few extra units and the custom options. He said that the state favors this approach. He noted that customization allows the developer to compete in the market place. 2) The law does not state that identical units must be offered and that the diversity of unit types would lead to a diversity of buyers, which is one goal of the law. 3) State statutes state only that the units must be comparable in size and workmanship and that the proposed units would have a very high standard of workmanship in both the affordable and market rate units. 4) Per the Wisniewski case, affordable housing projects could not discriminate against larger families and interior improvements could be added to affordable units as long as by doing so the affordable price cap was not exceeded. 5) Although he said he was hoping to avoid a lawsuit, he described the

circumstances under which his client would sue the Commission.

Mr. Owen clarified the statement made by Atty. Pocius in his 1/11/08 letter to Atty. Zizka that the Commission had taken the position that all of the units had to be made comparable by being "essentially identical." Mr. Owen pointed out that the idea of building "absolutely identical" units had been proposed not by the Zoning Commission but by the applicant in its first application, which had been subsequently approved by the Commission with only minor conditions, one of which was that any changes in the approved design would have to be reviewed by the Zoning Commission. When Myfield then built units that were different from each other and from the single set of plans in the approved application, Mr. Owen had informed Myfield's attorney that the applicant would have to seek a revised approval, and that the Zoning Commission could not issue certificates of zoning compliance until this matter had been resolved. Mr. Owen noted that Atty. Pocius's points about identical units were not relevant to the current application, which would be judged on its own merits. Mr. Fitzherbert and Mr. Owen briefly gave the background of the first application to make it clear that the concept of building "identical" units came from the applicant and not the Commission. Mr. Owen noted that the Commission, before approval, had asked the applicant if modifications could be made to individual units so that the units would not all be identical, and that the applicant had told the Commission that such variations would be impossible because the units would be factory-built. Mr. Owen said the current application included many features that improved the appearance of the development by introducing variety.

Questions and comments were taken from the public.

Mr. Fairbairn read his 1/26/08 letter on behalf of the Washington Community Housing Trust in support of the application.

Ms. Stevens, Mygatt Road, asked what the front yard setback requirement was. Mr. Owen noted that because this application falls under the state Affordable Housing Appeals Act, the developer could circumvent local zoning regulations if 30% of the units proposed were "Affordable" under the state definition. Ms. Stevens stated that Mygatt Road was slated for improvements and widening by the Town and so said the applicant must take this into consideration when siting the buildings. Mr. Sears, former First Selectmen, said there were no plans to widen the road. Mr. Owen said he did not see this as a safety issue because the proposed units would not significantly increase traffic on Mygatt Road. Atty. Zizka asked if the building was close enough to the road to cause a safety issue. Mr. Boling said that it would be 22 feet back from the property line and that the Board of Selectmen and Highway Dept. would not have approved the driveway cut if there had been a safety issue. He noted the buildings had been moved closer to the front boundary line to meet the setback requirements from the septic system. Ms. Stevens asked that the driveway sight lines be reviewed because she said Mygatt Road curves, which would prevent drivers pulling out onto the road from seeing oncoming traffic. Mr. Papsin, Mygatt Road, agreed. Mr. Boling said the proposed buildings would not block the sight lines as they would be 22 feet back from the boundary line.

Mrs. Watkins asked why the number of units had been increased and that the number of units be decreased to the original number approved in the first application. Mr. Boling said the number of units had been increased to increase the diversity of unit types and to provide more architectural variety.

Mr. Sears read of statement in support of the application and applauded the efforts of both the Commission and the applicant.

Mr. Rinaldez, First National Bank of Litchfield, said that he had been involved with affordable housing projects for 30 years, he was

impressed with the size and quality of the proposed units, and that this proposed affordable housing development was the best he had seen in Connecticut.

Mrs. Watkins noted that nearby residents were "nervous" because the applicant had stated that if the application was not approved, the Commission would be sued.

Mrs. Lopresti, Quarry Ridge, said the project was now a horrible eyesore and asked how long construction would continue in her back yard. Mr. Owen said there was no firm time table. Mr. Gitterman noted that all of the infrastructure was now in place and since the proposed buildings were modular construction, they would go up quickly once purchased. However, no one knew how long it would take for all of the units to be sold.

Ms. Stevens complained that from her property she would see 120 ft. of vinyl siding only 22 ft. from the road. She asked if landscaping could be required for screening. Mr. Gitterman noted that a pine buffer had been planted along the Quarry Ridge/Myfield boundary and that Myfield would continue to plant buffers. Ms. Stevens asked when she could expect to see evergreens along Mygatt Road. Mr. Owen pointed out that in the original approval screening had been required.

Mr. Hileman, chairman of the Housing Commission, stated that Commission had sent a letter in support of the application, noting that the project was 1) in compliance with CGS 8-30g, 2) in line with the goals of the Housing Commission, and 3) consistent with the 2003 Plan of Conservation and Development.

Mr. Tagley asked that the Commission make a survey to find out how many people living in Washington's existing affordable/moderate housing units were from Washington. He said he had heard that the majority of residents were not from Washington and so more affordable housing was not needed. Mr. Hileman said the latest data was from 2005 and that at that time 73% of the units were occupied with people who had Washington roots. Mr. Fairbairn of the WCHT said it was now closer to 80% with Washington roots. Mr. Owen said this would have no bearing on the current application. Mr. Gitterman stated that the affordable units would be made available to Washington firemen, EMT personnel, and people with Washington ties.

Mrs. McDonald asked what the price range of the units would be. Mr. Owen said this was not set and that the prices would vary depending on the options chosen by the purchasers.

Ms. Curtis asked if the affordable units would be available only to first time buyers. Mr. Owen said there was a complicated state formula used to determine who would qualify. Mr. Fairbairn said a buyer would have had to live in Washington for the last two years or for six out of the last ten years to qualify.

Ms. Stevens asked if there would be provisions in the deeds to require ownership of the units. Mr. Boling stated that the affordable units could not be rented out. Mr. Fairbairn said this would be enforced by the WCHT who would monitor the units on an annual basis.

Mr. Kiss asked what the basis was for proposing market rate housing. Mr. Owen said it was the decision of the owner and had no bearing on this hearing. Mr. Kiss asked how many affordable and market rate units were proposed. Mr. Owen said five affordable and eleven market rate units were proposed and that this met the requirements of the state statutes.

Mrs. Lopresti asked if the project were not affordable housing, would it be permitted on this site. Mr. Owen said that it would not be permitted under the local zoning regulations.

Mr. Papsin asked if the Commission would approve the application before looking into the sight line issue. Mr. Owen noted that the Commission had previously approved the same driveway in the previous application.

Regarding landscaping, Mr. Papsin asked for more evergreens than deciduous trees in the buffer. Mr. Boling said that ultimately there would be fairly dense vegetation along Mygatt Road, but he objected to planting dense evergreens because he said would change the rural landscape to a suburban look.

Mr. Owen asked for comments and questions from the commissioners.

Mr. Abella thought the current plans were an improvement, which resulted in a better application.

Mrs. Friedman asked what would happen if the developer could not sell the units. Mr. Owen said they would not be built until sold. Mrs. Friedman was concerned that the developer would buy from itself and then rent out units. Mr. Owen noted that as part of the previous application, the 30% ratio of affordable units to market rate units had to be maintained throughout construction; there could never be a time when 30% of the units were not affordable.

Mrs. Friedman asked if the Fire Dept. had reviewed the application. Mr. Ajello said it had commented on the turn around, water availability, and the hard shoulders along the driveway; all of which had not changed since the first application.

Mrs. Friedman asked what color the houses would be. Mr. Boling noted the houses would be white and that the two existing garages were red, but the new ones would be white in response to requests by neighbors.

Mrs. Friedman asked about outdoor lighting. Mr. Boling stated that the lighting would have shielded fixtures and that all of the outdoor lighting would comply with the new zoning regulations. The outdoor lighting for houses #5 and #6 already existed, but he said it was discreet and would not be changed. Mr. Owen noted that the lighting at 16 Church Street was a good example of shielded outdoor lighting. Mr. Gitterman said he would have no problem with modifying the existing lighting so that it would comply with the new regulations.

Mrs. Friedman asked how many parking spaces were proposed. Mr. Boling said there would be one garage bay per bedroom and strong shoulders along the driveway for additional parking.

Mr. Fitzherbert asked if there were any time dated restrictions on the buildings. Mr. Fowlkes said that the condominium documents had the usual restrictions that no changes could be made without the approval of the condo association.

Mr. Kiss asked what the estimated cost of the project was. Mr. Owen said this was not known and was not information that the Commission could require.

Mr. Kiss asked who the developer was. Mr. Owen said it was Myfield, LLC.

Mr. Ajello asked for the distance between the structure and the front boundary line. The 12/16/07 site plan was again reviewed. Mr. Boling noted the garage was slightly closer to the front line, only 13 ft. than was the house. He said the garage was located as proposed so that the vehicular infrastructure would be screened from Mygatt Road. It could be flipped to the opposite side of the house, but then the garage entrance would face the road. He said the location of the garage was a totally aesthetic decision.

Ms. Stevens asked for an evergreen screen between the building and the front boundary line. Mr. Abella thought a few evergreens could be planted, but not so many that it looked like a row. Mr. Boling said he wanted to keep the existing stonewall and hedgerow and plant maples.

Mr. Averill thought the current application was a vast improvement over the first one.

Mr. Owen asked the commissioners if any additional information was needed. It was agreed it was not.

MOTION: To close the public hearing to consider the application submitted by Myfield, LLC. for affordable housing at 7 Mygatt Road. By Mr. Owen, seconded by Mr. Averill, and passed 5-0.

Mr. Owen closed the public hearing at 9:52 p.m.

This public hearing was 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 9:58 p.m.

Consideration of the Minutes

MOTION: To accept the 12/17/07 Regular Meeting minutes as written. By Mr. Fitzherbert, seconded by Mr. Owen, and passed 5-0.

MOTION: To accept the 1/7/08 Special Meeting minutes as written. By Mr. Fitzherbert, seconded by Mr. Owen, and passed 5-0.

Pending Applications

Myfield, LLC/7 Mygatt Rd./Application/Affordable Housing Per 8-30g

Mr. Owen thought the current plan was better than the original; that simple revisions had resulted in a plan with a more pleasing appearance. He noted that while comparability had been a valid issue in the previous application, he did not have the same concerns with this proposal.

He said because the units were not lined up the development had more of a village feel and he liked the diversity of housing choices offered.

Mrs. Friedman said she was happy with the current application, but asked that a few items be addressed. She thought there should be a plan for screening the units along Mygatt Road and that this plan should be agreeable to both the developer and the neighbors. Mr. Owen noted that in the past the Zoning Commission had conditioned application approvals on screening to be agreed upon by the developer and neighbors.

Mr. Owen said that he agreed with Mr. Boling that the proposed placement of the garage for the front building was a safer location as it would keep passengers and the loading and pulling out of vehicles away from the road.

Mr. Ajello suggested that instead of a row of evergreens that other plantings more in keeping with the rural landscape be used to screen the building from the road.

Mrs. Friedman noted that the applicant had offered to modify the existing outdoor lighting for units #5 and #6 so that the light source would be shielded and consistent with the lighting for all of the other units and said she wanted this to be done.

Mrs. Friedman asked if the sight lines for the driveway were a concern. Mr. Wyant noted the road foreman had signed off on the driveway entrance.

Mr. Averill thought the current plan was a vast improvement over the previous one and that it would set high standards for any future affordable housing projects in Town.

Mr. Owen noted that the proposed housing units would be modestly sized and priced, consistent with the housing goals of the Town and state, and would increase the diversity of housing options in Town.

Mr. Abella also thought the current proposal was an improvement over the first. He noted that there was a demand for smaller, one bedroom units. He recommended that some evergreens be planted between the front building and the boundary line.

MOTION: To approve the application submitted by Myfield, LLC. to construct an affordable housing project at 7 Mygatt Road subject to the following conditions:

1. that reasonable vegetative screening , but not a solid row, be planted between Buildings #1 and #3 and the front property line along Mygatt Road, the plantings to be worked out by the developer and the neighbors and
2. that the existing outdoor lighting for Units #5 and #6 be brought into compliance with the rest

of the project's proposed outdoor lighting.

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

New Applications

James/79 West Shore Road/Special Permit: Section 13.11.3/Detached Accessory Apartment: Atty. Fisher represented the applicant and explained that the person buying the property wants to legalize an existing apartment. It was noted that the Health Department had already approved the application. Mr. Owen read the 1/28/08 ZEO Report. A public hearing was scheduled for Monday, February 25, 2008 in the Land Use Meeting Room, Bryan Memorial Town Hall, Washington Depot. Public hearings begin at 7:30 p.m. This is the second hearing scheduled and it will begin immediately upon the completion of the first hearing.

Pending Application

Moore/25 Litchfield Turnpike/Special Permit: Section 13.16/Shop and Storage Use by Contractors and Building Tradesmen: Mr. Owen read the 1/28/08 ZEO Report. A public hearing was scheduled for Monday, February 25, 2008 in the Land Use Meeting Room, Bryan Memorial Town Hall, Washington Depot. Public hearings begin at 7:30 p.m. This hearing will be the third and will begin immediately after the conclusion of the second hearing. Mrs. Friedman said she would inspect the site on behalf of the Commission prior to the hearing.

Carusillo/204 Wykeham Road/First Cut: Mr. Owen read the 1/28/08 ZEO Report, which stated the application was now complete and complied with all of the requirements for a first cut.

MOTION: To approve the application submitted by Mr. Carusillo for a first cut at 204 Wykeham Road. By Mr. Owen, seconded by Mr. Averill, and passed 5-0.

Other Business

Revision of the Regulations: Mr. Owen noted that the public hearing for consideration of revisions to Sections 13.11.1, 13.11.2, and 13.11.3 regarding accessory apartments was continued to the March meeting. Also, the ongoing discussion regarding possible revisions to Section 13.9: Tourist Home or Inn, would be tabled to the next meeting. Mrs. Friedman noted that discussion about this section was timely because she had heard that a local inn was considering expanding.

Joint Meeting with the Planning Commission: At the request of the Planning Commission, who has a new member who will not be available until March, the joint meeting will not be rescheduled until March. Mr. Owen stated that this meeting might not be necessary, however, because the Selectmen's Office might schedule a meeting of all the land use commissions with an agenda set by the Selectmen. The purpose of such a meeting would be to make the land use commissions aware of each other's goals and jurisdictions.

Communications

Mr. Owen said he had received a letter from Mr. Picton, chairman of the Inland Wetlands Commission, that Inland Wetlands should have

reviewed the recent Rumsey Hall School application for the dormitory and hockey rink prior to Zoning's decision. Mr. Owen stated that Mr. Ajello, the EO, had acted correctly in this matter because the Wetlands Commission had authorized its EO to determine whether applications fall under its jurisdiction. He noted that Rumsey was now cooperating with the Inland Wetlands Commission and that the plans had been referred to a consulting engineer for review.

Enforcement

Moore/25 Litchfield Turnpike: Mr. Moore has a public hearing scheduled in February for consideration of the current use of his property for shop and storage use by contractors and building tradesmen.

Peloquin/1 New Preston Hill Road: Mr. Ajello noted he had approved an application for light retail use as a flower shop.

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

Mr. Owen adjourned the meeting at 10:30 p.m.

FILED SUBJECT TO APPROVAL

Respectfully submitted,

Janet M. Hill

Land Use Coordinator