

## • October 27, 2003

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

MEMBERS ABSENT: Ms. Page

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

STAFF PRESENT: Mrs. Hill, Mrs. Luckey, Mr. Solley

ALSO PRESENT: Atty. McTaggart, Atty. Shub, Mr. Smith, Atty. Andrews, Mr./Mrs. Chapin, Mr. Fuller, Mr./Mrs. Frank, Mr. Hackney, Ms. Holiman, Mr. Kleinberg, Mr. Charles, Mr. Klein, Mr. Swain, Ms. Roberts, Mr. White, Mr. McGowan, Residents, Press

### PUBLIC HEARINGS

#### **Revision of the Zoning Regulations/Regulations to Enhance the Protection of the Water Quality of Lake Waramaug/ Sections 6.6.5, 6.6, 21.1.17, 21.1.26, 21.1.34, 21.1.50, and Revision of Lake Warmaug Residential District Boundary**

Mr. Martin called the public hearing to order at 7:32 p.m. and seated Members Fitzherbert, Friedman, Martin, and Owen and Alternate Shapiro for Ms. Page.

Mr. Martin explained the Commission had been working with the Lake Waramaug Association, Task Force, and Authority since June to bring about revisions to provide greater protection for the water quality of the lake. He then briefly described the proposed revisions: 1) Section 6 - a reorganization of the principal uses, accessory uses, and uses allowed by Special Permit in the R-3 District, 2) Section 6.5 - a new section that puts Washington Zoning Regulations in line with new regulations in Warren to permit activity within 50 to 75 feet of the shoreline by Special Permit, 3) Section 6.6 - a new section governing docks and floats, and 4) the revision of the R-3 District boundaries to increase the district to include the entire watershed.

Mr. Martin read the following documents for the record:

1. 10/27/03 letter from the Planning Commission stating the proposed regulations were in compliance with the 1993 Plan of Development and the draft 2003 Plan of Conservation and Development.
2. 9/22/03 memo from Mr. McGuinness, Director of the NW Ct Council of Governments.
3. 10/27/03 letter from Atty. Zizka. Section 6.6.7: Mr. Zizka offered a draft regulation to address Mr. McGuinness's concerns about referring dock applications to the Lake Waramaug Authority. If approved by the Authority and all other requirements were met, the ZEO could approve the application, if not approved by the Authority, a Special Permit would be required. Written description of the Lake Waramaug Residential District: Atty. Zizka provided a description, which clarified the drainage cited in this section was surface water and deleted the reference to highways, referring only to measurements from the lake shore. Section 6.6.12: Atty. Zizka suggested a revision regarding side yard setbacks for docks, which would allow an owner to apply for a Special Permit if he could not reasonably meet the 25 ft. side yard setback due to the size or shape of the lot, physical obstructions, or the location of sensitive natural resources.

4. Undated memo from Mr. McGowan. Mr. McGowan proposed to delete proposed Section 6.5.2.c and move it with a slight modification into 6.5.1.a to clarify what is meant by "near the lake." He did not want to specify an exact distance because he hoped the entire lot and especially the shoreline would be considered when landscaping and stormwater management plans were being drawn up. He noted that because each lot is unique due to topography, natural features, distance between buildings and the lake, etc. it would be difficult to set a specific distance and feared if a distance were set, attention would be focussed on that area only and not the entire lot.

5. Comments from Kent Inland Wetlands Commission. Section 6.5.2.c: This memo recommended "native" be changed to "native to Ct." Mrs. Roberts asked if there was an accompanying list of native plants. Mr. Martin responded the Conservation Commission and Steep Rock Assoc. have lists of invasive species. After a long discussion it was agreed the wording would be changed to "Vegetation native to Ct. is encouraged, especially along the shoreline."

6. 10/24/03 Memo from Mr. Picton, Acting Chairman Inland Wetlands Commission. This memo asked for clarification of Sections 6.4.6, 6.6.5, and 6.6.6.b and stated general support of proposed revisions.

The regulation of fences on the lake side of East and West Shore Roads was discussed. Mr. Martin explained the current regulations. Mrs. Friedman suggested fences be taken out of the Special Permit process, but be limited to three feet in height. Mr. Kleinberg asked the Commission to consider prohibiting fences on both sides of these roads to preserve the views of the countryside. Mr. Martin noted the Commission had to balance the rights of the individual property owners who may want fences for privacy or safety with the collective right of the public to have a view of the lake. Ms. Baldwin agreed with Mr. Kleinberg and suggested only "open" fences that would allow an unobstructed view be permitted. The Commissioners generally agreed to preserve the view by controlling height rather than the style and design of fences. Mr. Fitzherbert thought regulations to enhance the protection of the water quality of Lake Waramaug were beneficial, but that fences were a separate issue and should be taken out of this discussion. He also felt the proposed revisions governing the size of docks and floats did not directly address water quality. Mrs. Friedman and Mr. Martin disagreed, stating that except for the size restriction, these regulations had been the result of environmental concerns. It was noted both the Lake Waramaug Association members and the Planning Commission supported restrictions on size.

Mr. White, Chairman of the ZBA, voiced his concern about Atty. Zizka's recommendations regarding side yard setbacks for docks. He said the Zoning Board of Appeals has been very strict regarding setbacks for docks and feared the "flood gates" would open if the revision to address setbacks less than 25 ft. by Special Permit rather than by variance were adopted. He noted multiple docks were a problem on other area lakes and thought it good the Commission was being proactive regarding docks and fences.

Mr. Solley thought the Commission should establish a maximum length for docks.

Mr. Martin informally asked the Lake Waramaug residents in attendance whether they supported the proposed regulations regarding docks. They overwhelmingly did.

Mrs. Chapin did not think a property with long lake frontage should be limited to one dock. She also noted her concern that the proposed revisions did not address existing docks. Mr. Martin responded the state statues guarantee "grandfathering" and so existing docks would be totally protected.

Mr. Fuller did not support the proposed regulations because he thought most of the degradation of the lake's water quality was due to improperly functioning septic systems, which the revisions did not address. He also thought the possibility of a state boat launch should have been included. Mr. Martin noted the Commission did not have jurisdiction over septic systems or the proposed boat launch. Mr. Fuller did not think controlling dock size would improve the water quality, but Mr. Martin said 80% of the proposed dock regulations were aimed at protecting the shoreline, which would, in turn, help to protect the water quality. He read proposed Section 6.6.

There was a brief discussion regarding the maximum size of docks. While some like the Planning Commission thought the maximum size to be permitted was too large, it was noted they are currently unrestricted and so the proposed 360 sq. ft. maximum was an improvement over the current policy.

It was noted requiring docks to be removable did not necessarily mean they had to be actually removed on a seasonal basis. Mr. Martin noted this requirement dictated how the docks would be fastened to the shore and said there would be less potential damage to the shoreline if they were left in the water.

Mr. Chapin generally supported the intent of the proposed revisions, but noted many regulations would be added. He asked if the Commission had considered the increased workload for the Enforcement Officer.

Mr. Hackney made a lengthy statement regarding the affect of impervious surfaces on the water quality of the lake. While he supported the proposed revisions, he maintained the Commission could have a greater positive impact on the lake if it made a distinction between pervious and impervious surfaces when computing lot coverage for driveways and provided a coverage incentive to property owners around the lake to install gravel rather than paved driveways. He cited information from the EPA and NEMO and specifically addressed water permeable construction methods that could be required for driveways and parking areas. Mr. Martin noted Mr. McGowan had also submitted information on water permeable construction methods. He added, however, that the Commission had a 30 year lot coverage policy based on information from organizations such as NEMO and so would not modify the regulations without an in depth study into this matter. He also stated this would be a major change that could not be incorporated into this round of proposed revisions, but that the Commission would consider this recommendation for the future. Mrs. Friedman thought that coverage incentives in exchange for pervious driveways was an issue that should be considered on a townwide basis, not just for the R-3 District. Mr. Hackney stated the priority of the protection of such a valuable resource would justify the suspension of the current coverage regulations.

Ms. Holiman supported Mr. Hackney's recommendation. Mr. Martin again noted the Commission would study the matter, especially whether such a change in the regulations would have unintended consequences.

Mr. McGowan read a statement in support of the proposed revisions. He submitted a paper entitled, "Proposed Amendments to Washington Zoning Regulations Lake Waramaug Residential District Amendments," which included a seven page attachment on filter strip construction methods.

Mr. Frank supported the proposed amendments on behalf of the Lake Waramaug Association.

Mr. Martin recommended the public hearing be continued to provide the Commission the opportunity to consider all the comments made

and to draft appropriate text revisions.

Mr. Kleinberg asked the Commission for a more far reaching review of regulations to protect the lake's scenic and natural resources. Mr. Martin responded the Commission would take up the issue of the preservation of scenic resources for the entire Town when the 2003 Plan of Conservation and Development had been adopted.

Mrs. Friedman suggested another matter to be reviewed should be a limit on the size of boathouses. Mr. Fitzherbert again stated that he thought boathouse, fence, and dock regulations were not related to the protection of Lake Waramaug's water quality and so should be taken up separately.

Mr. Martin presented the map of the revised boundaries of the Lake Waramaug Residential District.

**MOTION:** To continue the public hearing to consider revisions to the Washington Zoning Regulations to enhance the protection of the water quality of Lake Waramaug, Sections 6.3, 6.5, 6.6, definitions, and revision of the boundary of the Lake Waramaug Residential District to 11/24/03. By Mr. Owen, seconded by Mrs. Friedman, and passed 5-0.

At 9:26 p.m. Mr. Martin continued the public hearing to November 24, 2003 at 7:30 p.m.

### **Revision of the Zoning Regulations/Definitions of Lot Coverage and Setback/Sections 21.1.34 and 21.1.50**

Mr. Martin called the public hearing to order at 9:27 p.m. and seated Members Fitzherbert, Friedman, Martin, and Owen and Alternate Brinton for Ms. Page.

Mr. Martin explained the proposed revisions were a collaborative effort of the Zoning Commission and ZBA to clarify what is included in the measurement of setbacks and calculation of lot coverage.

He read both the 9/22/03 memo from Mr. McGuinness of the NW Ct. Council of Gov'ts, which made no particular comments and the 10/27/03 memo from the Planning Commission, which generally supported the proposed amendments, but questioned the exclusion of bay windows, cantilevers, and gable end projections extending less than 24 inches from the setback measurements and coverage calculations. Mr. Charles, Planning Commissioner, said his Commission's concern was that these three categories could be used to increase living area, while the other items listed such as gutters, roof overhangs, and cornices could not.

There was a brief discussion about whether bay windows, cantilevers, and gable end projections should be included in the lot coverage and setback calculations even if they extend less than 24 inches from the structure. It was agreed that they should and that balconies should also be included.

Mr. Hackney asked that his comments concerning coverage made at the previous public hearing be considered part of this hearing as well.

**MOTION:** To close the public hearing to consider revisions to the Washington Zoning Regulations; Sections 21.1.34 - Lot Coverage and 21.1.50 - Setback. By Mr. Owen, seconded by Mrs. Friedman, and passed 5-0.

Mr. Martin closed the public hearing at approximately 9:45 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.

### **Revision of the Zoning Regulations/Special Exceptions/Section 17.5**

Mr. Martin explained the proposed Special Exception section would grant the Zoning Board of Appeals the authority to exercise some specific limited flexibility for setbacks and coverage in specific circumstances for single family dwellings and for setbacks for historically significant accessory structures. He noted both Mr. McGuinness from the NW CT. Council of Gov'ts and the Commission's counsel, Atty. Zizka, had concerns about some of the proposed criteria, which were too hardship oriented and inconsistent with Connecticut general statutes. Therefore, Atty. Zizka was working on a rewrite of this proposal. It was the consensus of the Commission to withdraw consideration of the proposed revisions at this time and to reschedule a public hearing after receiving written recommendations from Atty. Zizka. It was noted cooperation with the ZBA on the adoption of Section 17.5 would continue.

### **REGULAR MEETING**

#### **Regular Business**

Mr. Martin called the Regular Meeting to order at 9:47 p.m. and seated Members Fitzherbert, Friedman, Martin, and Owen and Alternate Shapiro for Ms. Page.

#### **Consideration of the Minutes**

**MOTION:** To accept the 9/22/03 Regular Meeting minutes and the 10/8/03 Special Meeting minutes as written. By Mrs. Friedman, seconded by Mr. Shapiro, and passed 5-0.

#### **Pending Application**

#### **The Gunnery School/22 South Street/Driveway**

Mr. Brinton recused himself and left the table.

Mr. Martin explained the application was to construct the first 1000 feet of the driveway, which had been shown on the plans submitted to the Commission three years ago for soccer fields and that were subsequently withdrawn. He said Zoning usually did not act on applications involving driveways until the Selectmen's Office had signed off, but that in this case the 65 day time limit in which to act on the application would expire before the Commission's November meeting.

He noted the 9/22/03 letter from Mrs. Graham, which stated The Gunnery had no specific plans to develop or improve the property beyond the construction of the driveway and there was no principal use associated with it. He read the 10/27/03 ZEO's report, which recommended

the application be acted on by the Commission, as opposed to the ZEO alone. He then read the 10/27/03 letter from Atty. Zizka. It was Atty. Zizka's opinion that the Zoning Regulations do not authorize the issuance of a permit for a driveway that is not tied to a proposed principal use.

Mr. Martin stated the Zoning Commission would make a recommendation to the Enforcement Officer and the ZEO could then act utilizing her own judgement. He asked the Commissioners for input.

Mr. Shapiro thought Atty. Zizka provided convincing justification for his opinion and also thought it was logical not to consider an accessory use before the primary use of a property was known. He referred to Section 12.1 of the Regulations.

Mr. Martin said he knew of no precedent where a driveway of this nature was permitted without knowing what the principal use of the property would be. He noted sometimes a permit is granted for a driveway to access a building lot approved for a single family dwelling, but that the principal use was always known. In this case Mrs. Graham had written that the property could be used for anything. He noted, too, the proposed driveway was 1000 feet long and 18 feet wide, or 18,000 sq. ft. of coverage. He thought approval without a site plan, which identified the principal use defied logic. He objected to The Gunnery's piecemeal approach.

Atty. Andrews said she represented The Gunnery and she noted Mr. Smith, engineer, was also present to answer technical questions.

Atty. Andrews agreed with Atty. Zizka's letter but claimed the proposed driveway does serve a principal use and apologized that the application did not state what that principal use was. She said the property had always been used by the school for the following low intensity purposes: 1) the school's wells for potable water; and 2) recreational activities such as hockey and skating on the ponds, hiking, environmental and nature education, art and photography, and as a refuge and retreat. She noted the property is located in the R-1 District and read Section 4.1, which states low intensity recreational activities are permitted. She said these uses did not require a principal building and were in harmony with the R-1 District. She said the driveway was proposed to provide access deeper into the parcel for these same activities. Mrs. Hill noted the wells were already served by a separate existing driveway.

Mr. Martin asked if she would submit a site plan for the uses she described. She stated they take place all over the lot. Mr. Martin thought The Gunnery put the Town in an unfair position by asking it to approve only one segment of an old site plan.

Mr. Martin noted the uses listed had not needed a driveway for the past 50 years. Atty. Andrews said that did not mean a better access was not permitted.

Mr. Owen stated the Regulations do not list low intensity recreational uses as primary uses permitted in the R-1 District.

Atty. Andrews stated the school did not propose any new use of the property now and that the current use would not change as a result of the driveway construction.

Mr. Fitzherbert noted the other schools in Town have brought in long range plans for review upon request of the Zoning Commission and all have complied except for The Gunnery.

Mr. Martin noted the Zoning Commission has been supportive of The Gunnery in the past and that its current position concerning the proposed driveway did not negatively reflect on the school. He said it was both logical and reasonable that the Commission must know what the driveway will access before it grants approval.

Atty. Andrews said the Commission should not base its decision on a use that has not yet been proposed. She said Atty. Zizka did not have the benefit of her statement when he wrote his opinion and asked that he now revise it.

Mr. Martin advised The Gunnery it could withdraw its application and resubmit when ready to document what uses will be associated with the driveway.

Mr. Owen recommended the ZEO deny the application without prejudice. He also noted the site plan submitted with the driveway application included soccer fields

Mr. Shapiro thought the uses listed by Atty. Andrews were intermittent and there was no predominant use of the property. Mr. Fitzherbert agreed, adding there was no current use that required an 18 foot wide, 1000 foot long, paved driveway. Mrs. Friedman also agreed, noting the uses Atty. Andrews had noted had not required a driveway in the past.

**MOTION:** To recommend the Zoning Enforcement Officer deny without prejudice the application submitted by the Gunnery School to construct a driveway at 22 South Street for the reasons listed in the 10/27/03 letter from Atty. Zizka, which is incorporated in this motion. (See attached) By Mr. Martin, seconded by Mr. Owen, and passed 5-0.

Mr. Brinton returned at 10:22 p.m.

#### New Applications

**Meeker/269 New Milford Turnpike/Special Permit: Section 9.4.1.a/Retail Pool and Spa Store:** Mr. Meeker was present. Mr. Martin noted the ZEO recommended a public hearing be scheduled for November 24. The hearing was set for 8:00 p.m. Mr. Meeker was advised to consult with Mrs. Hill regarding the documentation required for the application.

**Jahnke/52 River Road/Special Permit: Section Section 13.11.3/ Detached Accessory Apartment:** A public hearing was scheduled for Monday, November 24, 2003 at 8:05 p.m. in the Land Use Meeting Room

**Devereux Glenholme School/81 Sabbaday Lane/Special Permit: Section 4.4.10/Addition to School Building:** Mr. Fitzherbert explained the school proposed a 350 sq. ft. addition to the "little kids" school building and that he would recuse himself when the application is considered. A public hearing was scheduled for November 24, 2003 at 8:10 p.m. in the Land Use Meeting Room.

#### Other Business

Mr. Martin noted the public hearing to consider revisions to the Zoning Regulations to enhance the protection of the water quality of Lake Waramaug had been continued to 7:30 p.m. on 11/24 and the proposed amendment for Section 17.5, Special Exceptions, had been

temporarily withdrawn.

### **Revision of the Zoning Regulations/Definitions of Lot Coverage and Setback/Sections 21.1.34 and 21.1.50**

It was the consensus these two sections should be amended as follows:

- **Section 21.1.34: Lot Coverage:** The fifth sentence was revised to: "The ground directly beneath roof overhangs, eaves, cornices and gutters and leaders is not included in the lot coverage calculations if these projections extend less than 24 inches from the structure."
- **Section 21.1.50: Setback:** The third sentence is changed to read, "Chimneys, balconies, bay windows, porches, decks, basement hatchways, cantilevers, handicap ramps, utility pads, gable end projections, and entry steps or stoops are part of the structure to which they are attached and must meet all setback requirements as enumerated in Section 11.6. The fourth sentence was revised to, "Roof overhangs, eaves, cornices, and gutters and leaders that extend less than 24 inches from the structure are not counted in the setback calculations."

**MOTION:** To approve revisions to the Washington Zoning Regulations; Sections 21.1.34 - Lot Coverage and 21.1.50 - Setback as revised at the 10/27/03 Zoning meeting. By Mr. Owen, seconded by Mr. Fitzherbert, and passed 5-0.

(Alternate Brinton was seated for Ms. Page.)

Mr. Shapiro was reseated.

**Revision of the Zoning Regulations/Section 14: Site Plans:** Mr. Martin noted Mr. Fitzherbert and Mrs. Friedman have agreed to review Mr. Oley's latest draft and report back to the Commission. This will be included on the 11/24 agenda.

**Plan of Conservation and Development:** Mrs. Hill announced the public hearing on adoption of the Plan was scheduled for 10/29/03 at 7:30 p.m.

**Washington Montessori School/240 Litchfield Turnpike/Request to Revise Landscaping Plan:** The 10/22/03 letter to the Commission from Mr. McNaughton was reviewed. He requested a revision of the approved landscaping plan and detailed reasons why the requirement for shade trees to be planted 15 feet apart in all directions in the parking islands to the north of the building should be changed so that the existing 11 deciduous trees planted satisfied the requirement. Mr. Martin referred to the 10/27/03 ZEO report. The ZEO had inspected the site and had consulted with the landscaper and Mr. McNaughton. She recommended the request be granted for the reasons listed in the letter and because the landscaper had advised her this type of tree should be planted approximately 30 feet apart.

**MOTION:** To approve the request submitted by the Washington Montessori School/240 Litchfield Turnpike to modify its landscaping plan per the 10/22/03 letter from Mr. McNaughton. By Mr. Owen, seconded by Mrs. Friedman, and passed 5-0.

Correspondence

It was noted letters from Ms. Baldwin and Mr. Kleinberg had been received requesting an in depth review and revision of the Zoning



Regulations to preserve the scenic area around Lake Waramaug. They also requested a moratorium on all new construction until the revisions were adopted. The Zoning Commissioners thought that a moratorium on further development in the Lake Waramaug Residential District was not necessary at this time. It was agreed, however, that recommendations made regarding fences and lot coverage would be considered in the future.

#### Enforcement

**Madoff/West Shore Road/Fence:** Mr. Ajello inspected the property and found the fence had been lowered. He remeasured it to confirm it complied with the conditions of the Special Permit approval. There was a brief discussion regarding fence heights, recommendations in the Plan of Conservation and Development to protect views, and the rights of property owners to privacy.

**Frater-Feldman/West Shore Road/Boathouse:** Mrs. Hill said she had thoroughly investigated complaints that the boathouse was too tall and had determined it was less than 15 feet high, which was consistent with the zoning permit granted. Mrs. Friedman noted she thought the height of boathouses should be restricted.

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

Mr. Martin adjourned the meeting at 10:50 p.m.

FILED SUBJECT TO APPROVAL

Respectfully submitted,

Janet M. Hill  
Zoning Enforcement Officer