

October 28, 2002

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

MEMBERS ABSENT: Mr. Fitzherbert, Ms. Page

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

STAFF PRESENT: Mrs. Hill

ALSO PRESENT: Mr. McCarthy, Atty. Kelly, Mr. De Pecal, Mr. A. McNaughton, Mr. W. McNaughton

PUBLIC HEARINGS

Revision of the Zoning Regulations/Section 12.14/Generators, Air Conditioners, Pool Filters, and Other Noise Generating Equipment

Mr. Martin called the public hearing to order at 7:30 p.m. and seated Members Friedman, Martin, and Owen and Alternates Abella and Shapiro for Mr. Fitzherbert and Ms. Page. Mrs. Friedman read the legal notice published in **Voices** on 10/16/02 and 10/23/02.

Mr. Martin reviewed the list of documents in the file. (See attached list.)

Mr. Martin read the 9/25/02 report from Mr. McGuinness, Director NW Ct. Regional Council of Governments, which stated the proposed revisions did not conflict with any policy or plan of the NW Ct. Regional Council of Gov'ts. The report also included a suggestion that in 12.14.3 the defined term, "building line," be substituted for "setback line." He then read the 10/22 memo from the Planning Commission, which stated the proposed revisions would be beneficial to the Town and in keeping with the Plan of Conservation and Development.

Mr. Martin explained the proposed revision would increase the permitted setback distance for generators, air conditioners, etc. from 10 to 25 feet from the structure principally served (12.14.1) and for pool equipment from 25 to 50 feet from pools served (12.14.2). He also noted the revision, which requires this type of equipment to be located closer to the structure served than to any setback line (12.14.3). He noted the ZBA had recommended some relief of the setback requirement due to the number of variance requests received for Section 12.14.

Mr. McCarthy thought that easing the permitted setback distances was helpful but should be increased even more than the Commission had proposed.

Atty. Kelly asked why the Commission had not considered requirements such as enclosures, mufflers, and planted buffers to solve the noise and visual problems. Mr. Owen responded they would not be effective, would be difficult to enforce, and said the regulation as written provides an incentive for the property owner to keep the equipment as quiet as possible. Mr. Martin read the purpose of this section. Atty. Kelly thought the addition of 12.14.3 that noise generating equipment shall be located closer to the structure served than to any setback line was a good improvement.

Atty. Kelly saw no benefit in adding Section 12.14.4., which clarifies that this equipment, and its enclosures and its pads are structures since

this is already addressed in Section 21 (Definitions). He recommended the definition of "Building" in Section 21.1.10 be amended to include an enclosure to store equipment. Mr. Martin noted if the Commission decided to do so, it could delete Section 12.14.4 due to redundancy since it would be a minor change to the proposed text.

There were no additional comments or questions from the public or from the Commissioners.

MOTION: To close the public hearing to consider revisions to Section 12.14 of the Town of Washington Zoning Regulations concerning generators, air conditioners, pool filters, and other noise generating equipment. By Mr. Owen, seconded by Mr. Shapiro, and passed 5-0.

Mr. Martin closed the public hearing at 7:48 p.m.

Revision of the Zoning Regulations/Section 17/Nonconforming Lots, Land, Structures, and Uses

Mr. Martin called the public hearing to order at 7:48 p.m. and seated Members Friedman, Martin, and Owen and Alternates Abella and Shapiro for Mr. Fitzherbert and Ms. Page. Mrs. Friedman read the legal notice published in **Voices** on 10/16/02 and 10/23/02.

Mr. Martin reviewed the list of documents in the file. (See attached list.) He read Mr. McGuinness's 9/25/02 report, which stated the proposed revisions did not conflict with any policy or plan of the NW Ct. Regional Council of Gov'ts, and the 10/22/02 Planning Commission memo, which stated since the revisions were recommended by Town Counsel, the Planning Commission had no opinion.

Mr. Martin noted the proposed changes; 1) deletion of language as recommended by Atty. Byrne to bring this section into compliance with 8-2 of the Ct. General Statutes, 2) standardization of the terms lot/land, building/structure, and ordinance/regulation, 3) deleting a sentence fragment in 17.6, and 4) changing "regulation" to "requirement" in the third line of 17.3.

Atty. Kelly voiced agreement with the proposed amendments as legally valid, but strongly asserted that they did not go far enough. He pointed out that nonconforming lots, buildings, and uses contribute greatly to the historical and rural character of Town, but that 17.1.c states their survival should not be encouraged. He spoke of the national epidemic of historic buildings being demolished, the need to preserve the heritage of Town, and the consequences the Zoning Regs have on owners of nonconforming properties, homes on smaller lots, etc. He stated the current Zoning Regulations work against small affordable neighborhoods and asked for the addition of a statement recognizing the value of nonconforming properties and structures.

Mr. Martin noted Mr. Kelly had raised some valid points, but explained the deletions proposed for Section 17 were only as a result of a legal review, not a fundamental overhaul of the entire section. He also noted the Commission had begun discussing a possible future revision to the Regulations, which would permit flexibility for non conforming properties and structures through the Special Exception process rather than by variance. He said both Zoning and the Zoning Board of Appeals were interested as it would provide for flexibility without proof of hardship, but that such a revision would take a thorough and thoughtful review; it was not a revision that could be decided upon this evening.

Atty. Kelly thought it would be better if the revisions were made all at once, since he thought a piecemeal approach would create public confusion.

Mr. Martin asked each Commissioner if he agreed with the basic philosophy of the desirability of retaining the Town's non conforming buildings, neighborhoods, and lots and if so, whether he considered it a priority.

Mr. Brinton and Mr. Abella: Agreed the phrase, "not to encourage their survival" should be deleted now.

Mr. Owen: Noted the Commission understood the problem Atty. Kelly was addressing. Said Zoning had already increased the permitted maximum coverage for smaller lots. Noted by its nature all the work to amend the Regulations was piecemeal. Agreed "not to encourage their survival" could be deleted now.

Mrs. Friedman: Agreed with many of Atty. Kelly's points including deletion of "not to encourage their survival," but questioned whether all the revisions should be made at once or if a more detailed review should be undertaken later.

Mr. Shapiro: Although he agreed in principle with the deletion of the phrase, he recommended the Commission give thoughtful consideration to any and all revisions to this section.

Mr. Martin: The phrase, "but not to encourage their survival," in 17.1.c could be deleted since it was not an operative clause from either a legal or an enforcement viewpoint. The key operative words in 17.1.c require that once a nonconformity is abandoned, it can not be reinstated. This particular phrase, while not operative, sets an unhelpful tone and should be deleted.

MOTION: To close the public hearing to consider revisions to Section 17 of the Town of Washington Zoning Regulations concerning non conforming lots, land, structures, and uses. By Mr. Owen, seconded by Mrs. Friedman, and passed 5-0.

Mr. Martin closed the public hearing at 8:27 p.m.

Revision of the Zoning Regulations/Section 18/Zoning Board of Appeals

Mr. Martin called the public hearing to order at 8:28 p.m. and seated Members Friedman, Martin, and Owen and Alternates Abella and Shapiro for Mr. Fitzherbert and Ms. Page. Mrs. Friedman read the legal notice published in **Voices** on 10/16/02 and 10/23/02.

Mr. Martin reviewed the list of documents in the file. (See attached list.) He read the 9/25/02 report from the NW Ct. Regional Council of Gov'ts, which stated the proposed revision did not conflict with any of its plans or policies. He also read the Planning Commission's 10/22/02 memo, which stated that the Planning Commission had no objections.

There were no questions or comments from the public or the Commissioners.

MOTION: To close the public hearing to consider an amendment to Section 18 of the Washington Zoning Regulations: the addition of Section 18.1.3 to prohibit the granting of use variances by the Zoning Board of Appeals. By Mr. Owen, seconded by Mrs. Friedman, and passed 5-0.

Mr. Martin closed the public hearing at 8:30 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 meeting to order at 8:30 p.m. and seated Members Friedman, Martin, and Owen and Alternates Abella and Shapiro for Mr. Fitzherbert and Ms. Page.

Consideration of the Minutes

MOTION: To accept the 8/26/02 and 9/23/02 Regular Meeting minutes as submitted. By Mrs. Friedman, seconded by Mr. Owen, and passed 5-0.

Other Business

Revision of the Zoning Regulations/Section 12.14/Noise Generating Equipment

Mr. Martin noted the two issues to be decided were 1) whether to use the term, "building line" or "setback line" in section 12.14.3 and 2) whether to include proposed redundant section 12.14.4 for clarification. It was the consensus to use "building line" and to include in parenthesis (defined in Section 21.) It was also agreed not to adopt proposed section 12.4.4 as it was redundant.

MOTION: To approve the amended revision to Section 12.14 of the Washington Zoning Regulations:

12.14 Generators, Air Conditioners, Pool Filters, and Other Noise Generating Equipment. The purpose of this section is to limit the impact of noise generating equipment on neighboring properties and to give the owners of noise generating equipment an incentive for reducing the noise produced by equipment they own and operate for their own benefit.

12.14.1 All generators, air conditioners, and other noise generating equipment installed in a fixed location (except pool filters and related equipment; see 12.14.2) shall be situated within twenty- five (25) feet of the structure principally served.

12.14.2 All pool filters, pool heaters, and related equipment shall be situated within 50 (50) feet of the pool served.

12.14.3 All generators, air conditioners, pool filters, and other noise generating equipment shall be situated nearer to the structure principally served than to any building line (defined in Section 21).

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

Revision of the Zoning Regulations/Section 17/Nonconforming Lots, Structures, Etc.

It was the consensus to delete the following phrase in Section 17.1.c, "but not to encourage their survival." Mr. Martin explained this was not an operative clause from a legal or enforcement standpoint since once a non conforming use was abandoned, it could not return. All other

amendments to this section were adopted in the form discussed at the public hearing.

MOTION: To adopt the proposed amendments to Section 17; Non Conforming Lots, Land, Structures, and Uses:

1. Delete all sections recommended by Atty. Byrne in his 5/10/02 letter,
2. Change the word, "building(s)" to "structure(s)" throughout the text,
3. Change the word, "land(s)" to "lot(s)" throughout the text,
4. Change the word, "ordinance(s)" to "regulation(s)" throughout the text,
5. Section 17.1: Delete the phrase, "but not to encourage their survival,"
6. Section 17.3: third line: Change "regulations" to "requirements,"
7. Section 17.6: delete entire second sentence,
8. Renumbering as required throughout.

By Mr. Shapiro, seconded by Mr. Abella, and
passed 5-0.

Revision of the Zoning Regulations/Section 18: ZBA

Mr. Martin noted this was a straightforward change and that there had been no concerns raised at the public hearing.

MOTION: To adopt the following amendment to Section 18.1.3 of the Town of Washington Zoning Regulations:

18.1.3 The Zoning Board of Appeals shall not grant a variance for a use of land which is not listed as a permitted use for the district in which the land is located.

This section of the Regulations is enacted, pursuant to the provisions of 8-6(a)(3) of the General Statutes, for the purpose of protecting the public health, safety, and welfare of the inhabitants of the Town of Washington and achieving the purposes for which these Regulations have been enacted as articulated in Section 1.3.

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

The effective date for all the revisions approved this evening will be 15 days after the date the legal notice is published in the newspaper.

New Applications

Cass-De Pecol/46 June Road/Special Permit: Section 13.11.3/ Detached Accessory Apartment

The application is to construct a new single family dwelling on this property and to convert the existing house to a detached apartment. Mrs. Hill noted the Commission's policy has been to have Inland Wetlands and Health Department approval prior to scheduling a public hearing. Health Department approval was granted in this case, but the Inland Wetlands Commission had not yet decided whether to require a full application for the construction of the driveway to serve the new single family dwelling. It was noted the proposed driveway was 1600 feet long with a 14% grade and some sharp curves. Mrs. Hill asked whether the Commission thought the construction plans should be referred to the Fire Department and/or a consulting engineer due to concerns about erosion control measures and drainage. A public hearing will be scheduled for Monday, November 25, 2002 if either the Inland Wetlands Commission decides an application is not required or grants approval for the driveway in time for legal notices to be published for the 25th. If not, the hearing will be scheduled for December. The application will be referred to the Fire Department for comment and to an engineer for review. Coordination with Inland Wetlands will take place if it also decides a review is necessary.

Other Business

Washington Montessori School/240 Litchfield Turnpike/Review of Building Materials

Mr. Martin read the 9/24/02 fax from Mr. McNaughton to Mr. Andrews, contractor, regarding permitted work hours and the consequences should they be violated. Mrs. Hill stated she had received no complaints since the hours had been revised and Mr. Node had contacted her once about Saturday work to maintain erosion controls as required by the Inland Wetlands Commission.

Mr. McNaughton circulated the sheet, "Washington Montessori School, Building Materials and Colors," dated 10/28/02. He showed samples of the materials and colors listed. Basically the roof shingles would be slate colored asphalt. Most of the siding building materials sand or a similar color, and the trim ivy green. William McNaughton strongly recommended that these colors and materials were appropriate. Mr. Martin indicated where there was a choice he favored a less glossy finish. It was the consensus that the sample materials and colors presented were acceptable and no further review would be necessary.

Pending Application

Beck/132 Calhoun Street/First Cut

It was noted Health Department approval had not been received.

Other Business

Mr. Shapiro reported briefly on the 10/10/02 meeting Atty. Zizka had with the ZBA. He noted Atty. Zizka specifically explained the conditions listed in the state statutes that must be met in order to grant a variance and what constitutes a hardship.

Noting that now the Zoning Board of Appeals is requiring hardship as the basis for granting variances, Mr. Martin asked the Commissioners to consider whether it would be in the best interests of the Town to institute a process to provide flexibility for non conforming structures and lots, per Section 17. This could be done by Special Permit or Special Exception without the need to prove hardship, but would require an amendment to the Zoning Regulations that would include specific criteria for these cases. After substantial discussion it was unanimously thought that some flexibility or relief should be provided for nonconforming property owners and that the ZBA should be the body empowered to grant these permits or exceptions according to the limitations and guidelines to be adopted by the Zoning Commission. Mr. Owen pointed out that the ZBA has the institutional experience to make these types of decisions, while Mr. Martin stated the Zoning Commission already has a full workload. It was noted Atty. Byrne had provided a copy of Litchfield's zoning regulation and his own suggested wording for the Commission to consider. Mr. Shapiro and Mr. Abella volunteered to work on a first draft. Mr. Martin will discuss this matter with Mr. White, ZBA Chairman. The ZBA will be asked to review an early draft before a public hearing to consider this revision to the Regulations is scheduled.

Plan of Development: Mr. Martin recommended each Commissioner read workbook #5 on Development. Discussion of this chapter began on 10/15 and will continue on 11/19 at a Special Meeting of the Planning Commission in the Land Use Meeting Room. The Zoning Commission is again invited to attend and participate.

Subcommittee on Lot Coverage: Mr. Owen reported on the 9/16/02 meeting with Mr. White and Mr. Owens of ZBA and Mrs. Hill. What should count as coverage and the method of calculation was discussed. Mr. Owen thought the clarifications decided upon including a universal diagram to be drawn by Mr. Owens should be adopted as part of the Zoning Regulations. He noted a second meeting would be held, but a date had not yet been set. Mr. Martin was encouraged the two boards were in agreement on this matter.

Revision of the Zoning Regulations/Section 14/Site Plan Requirements: Mr. Martin reviewed the discussion at the last meeting where several people expressed concern that the stringent requirements in the draft regulations would apply to too many routine projects. He noted the draft had been sent out for review to the other land use commissions and to Mr. McGuinness, Director of the Ct. NW Regional Council of Gov'ts, and Mr. Neff, engineer. Mr. Martin read part of Mr. McGuinness's informal review, which strongly recommended not adopting site plan requirements for the construction of single family dwellings. He also part of Mr. Neff's letter, which similarly recommended that single family dwellings and additions should be exempt. Mr. Neff had also sent a copy of the Kent regulations for review. Mr. Owen did not think Washington should be the most restrictive town in the state, while Mrs. Friedman agreed routine procedures should be exempt and asked if there was a way the Commission could grant a waiver for these. Mrs. Hill agreed, but suggested the size of the proposed building and steep slopes should be taken into account. Mr. Martin noted the Commission's goal had been to draft guidelines to better control runoff. He added that this kind of tool would have been helpful to the Commission when reviewing projects such as the new Montessori School. He asked if the Commission wanted to continue pursuing this project. He said that the next step would be to factor all the input received to date into a second draft. It was the unanimous consensus to begin work on a second draft that will address the comments and suggestions received. The Commission will ask both Mr. Oley, consulting engineer, and Mr. McGuinness to attend a future meeting to discuss this further with the Commission.

Revision of the Application Forms: Copies of the work done to date were circulated before the meeting. The Commission is waiting for Atty. Zizka's review before making a final draft. Mr. Owen explained the purpose of the revisions is to enable the forms to be available on the Town website and to provide more information on each form. The website was briefly discussed.

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

Mr. Martin adjourned the meeting at 10:15 p.m.

FILED SUBJECT TO APPROVAL

Respectfully submitted,

Janet M. Hill, Zoning Enforcement Officer