

## October 8, 2003

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

ALTERNATES PRESENT: Mr. Abella, Mr. Shapiro

ALTERNATE ABSENT: Mr. Brinton

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

ALSO PRESENT: Atty. Fisher, Mr. and Mrs. Boyer, Mr. Sedito, Mr. Whitney, Mr. Charles, Mrs. H. Averill, Mrs. Wilbur, Mr. and Mrs. Rourke, Mr. Anderson, Mrs. Shannon, Mr. Cannavaro, Mr. Boling, Mr. White, Residents, Press

### PUBLIC HEARING

#### **Washington Community Housing Trust/16 Church Street/Request to Amend Condition #12 of Special Permit for 11 Affordable Housing Units**

Mr. Martin called the public hearing to order at 7:35 p.m. and seated Members Fitzherbert, Friedman, Martin, and Owen and Alternate Abella for Ms. Page, who arrived at 7:45 p.m. and so was not present for the entire hearing.

Mr. Martin stated the public hearing was required per state statute and that only discussion pertinent to the proposed modification of condition #12 of the Special Permit approval conditions would be considered. He noted the criteria for deciding whether condition #12 would be amended would be the same criteria required by state statute that had been considered by the Commission when it acted on the original application. 1) Is there a substantial public interest that would be harmed if the condition were modified? 2) If so, does that public interest outweigh the need for affordable housing? He stated the Commission would not become involved in the negotiations between the New Preston Water Company (NPWC) and the Washington Community Housing Trust (WCHT), and would consider its statutory responsibility only.

Mr. Martin stated all documents pertinent to the water issue from the initial public hearing would be entered into the record of this hearing. Also all copies of recent NPWC and WCHT correspondence received for the file and the 1993 Plan of Development were included in the record.

Atty. Fisher represented the WCHT. He noted the current condition #12 prevented demolition and construction on site until the State DPH approves the water system upgrade plan. The Trust proposed to amend this to state instead that the certificate of zoning compliance could not be issued until state approval was granted. This modification, he said, would allow work to start now, which was very important to the WCHT and would not cause any hardship for the users of the NPWC since a certificate of occupancy could not be issued without zoning compliance.

Mr. Martin asked if the condition was not amended, what impact would there be on the project? Mr. Sedito, construction manager, stated if work could not begin immediately, the project would be delayed until spring. He anticipated cost increases if the work was delayed. Mr. Boyer said the construction contracts would expire after 60 days and also voiced his concern about the recent large increases in the cost of

construction materials. Atty. Fisher also noted a six month delay in the start of construction would result in a six month delay in opening the units.

Mrs. Rourke asked the Commission to review the reasons why it had included condition #12 when the Special Permit was originally approved. Mr. Martin said there had been evidence presented that the water supply in the ground was adequate, but that the distribution system needed to be upgraded. He said condition #12 had been his idea to ensure an orderly process and to acknowledge on the record that the Zoning Commission understood this was an important matter. He said it was not meant to be used to obstruct or to jeopardize the project.

Atty. Fisher submitted a letter dated 10/7/03 from the State Department of Public Health, which stated the state was not concerned whether demolition and/or construction took place on the premises, but before any changes to the water system could be made, that department's approval was required. For the record, Mr. Martin read the 10/7/03 letter addressed to Atty. Fairbairn. He noted this letter clarified the state's position that its approval is required before any work on the water system could begin, but not before construction of the dwelling units could begin.

Mrs. Rourke did not think waiting to begin the work until spring would have a negative financial impact. She also stated there was no potable water source confirmed for the units. Mr. Boyer responded it was not realistic to think the WCHT would install its own water system and said the state requires use of the NPWC system.

Mr. Anderson stated the original condition #12 had been well thought out and should remain in place to ensure the units wouldn't be constructed and then learn they had no water supply. Mr. Martin pointed out that if this happened, it would have to be dealt with by the State Department of Public Health.

Mr. Anderson complained that the asbestos removal that was allowed to begin at 16 Church Street was actually demolition that is not permitted per condition #12. Mr. Martin briefly explained the building code had been researched and the property owner had the right to remove the asbestos. Mr. Fitzherbert agreed stating that under federal law all asbestos must be removed before demolition may begin.

Mr. Martin asked whether there was a public interest that would be harmed if condition #12 were amended, and if so, did that interest outweigh the need for affordable housing.

Mr. Owen suggested residents near 16 Church Street might think the WCHT would have more leverage to receive lenient treatment from the Zoning Commission if the buildings are already in place and then it is determined there is a problem with the water supply. He said, however, that this would not be the case. Mr. Martin agreed, saying State approval of changes to the water system is a state Department of Public Health requirement, not a zoning issue. If there is no resolution between the NPWC and the WCHT, he said, it should not be dealt with by any agency of the Town of Washington. He added it could be argued that now that the State DPH jurisdiction on this matter is a fact of this hearing's public record, condition #12 could be considered redundant to the State DPH requirements.

Mr. Owen asked if the Commission could require a bond from the property owner to ensure the water system would be properly completed. Mr. Martin did not think Zoning should interfere with the state DPH. It was noted the Zoning Commission would have no power to over rule the Department of Public Health, but could require an agreement for the upgrade of the system prior to issuance of a Certificate of Zoning

## Compliance.

Mrs. Shannon worried that if the units were built and there was no water supply system it would be a fire hazard for the neighborhood. Mr. Owen noted the current condition #12 required only that a plan for the water system be agreed upon, not that a new system be installed, and so thought whether or not the condition was amended would not affect the safety of the neighborhood. Mr. Boyer stated the WCHT's plans call for the installation of a cistern of non potable water that will be directly available for fire safety. He said this could be installed without DPH approval because it would not be connected to the drinking water system. He also stated WCHT agreed to pay for an 8" main that would be attached to fire hydrants and would improve fire safety in this part of Town.

Mrs. Rourke said it was a risk for the WCHT to proceed with construction because upgrades to the water system are needed before it may join the NPWC and being permitted to join is not guaranteed. Mr. Shapiro asked for clarification regarding the water source. Mrs Rourke stated there is a potable water source, but the WCHT can't hook up to it unless the developer pays for the upgrades required. Mr. Martin read Mr. Black's 8/2/03 letter, which confirmed there was plenty of water available in the ground and noted the WCHT's preference was to join the NPWC rather than install its own water system.

Mrs. Friedman asked Mr. Boyer if he was concerned about the possibility of vandalism should the units be constructed but then can't be lived in because an agreement was not reached. Mr. Boyer said in that case a security officer would have to be hired, adding he thought the potential for vandalism was worse now with the empty school building on site.

Mr. Charles and Mr. Sedito explained the construction schedule would allow new residents to move in before the start of school next year. Mr. Martin reminded them the units could be occupied only if State DPH approval of the water system upgrade was granted.

Mrs. Averill, 10 New Preston Hill Road, welcomed the proposed improvements to the neighborhood and said by amending condition #12 these improvements could be made sooner. She said the project would bring positive results and good housing to the neighborhood and that she thought it was possible for the parties involved to resolve the matter and reach an agreement.

Mr. Martin thanked her for the spirit in which she made her comments.

Mr. Martin thanked all those who attended the hearing.

There were no other comments or questions from the Commission or the public.

MOTION: To close the public hearing to consider the request made by the Washington Community Housing Trust to modify condition #12 of the Special Permit for 11 affordable housing units at 16 Church Street. By Mr. Owen, seconded by Mr. Fitzherbert, and passed 5-0.

Mr. Martin adjourned the public hearing at 8:21 p.m.

The public hearing was recorded on tape. The tape is on file in

the Land Use Office, Bryan Memorial Town Hall, Washington Depot, Ct.

## SPECIAL MEETING

Mr. Martin called the Special Meeting to order at 8:23 p.m. and seated Members Fitzherbert, Friedman, Martin, and Owen and Alternate Abella for Ms. Page.

Mr. Shapiro thought condition #12 was superfluous because the DPH would not let the water system upgrade begin without its approval. Since there is an adequate supply of potable water, he did not think an amendment to #12 would make any difference.

Mr. Martin agreed, saying that we now have on the record that the State DPH would conduct a proper evaluation, approval, and enforcement of the required improvements to the water system. He noted, too, that in the seven months since the Zoning Commission approved the Special Permit, the DPH had not yet received all the information it had requested from the NPWC and so the condition was creating difficulties for the applicant. He also thought the Zoning Commission should not be involved in the ongoing negotiations between the NPWC and the WCHT.

Mr. Fitzherbert said he was very concerned about the slow progress of the negotiations, thought the State DPH would protect the interests of the community, and said approval of a modification of condition #12 would still mean the buildings would not be occupied until all parties were satisfied.

Mr. Owen said the difficulty in reaching an agreement about the improvements to the water system should not be used as a tool to derail the project. That, he said, would not be in the public interest.

Mr. Martin explained that at the time the Special Permit was approved, the Commission had not understood the policies and position of the DPH, but now those policies were on the record. Mr. Fitzherbert agreed, adding that at that time the Commission had added condition #12 to ensure the improvements would be made.

Ms. Page noted she had voted against the Special Permit, but in this case, was satisfied with the documentation received. She said there would be no harm to the public interest because the DPH would ensure the required work would be done.

Mr. Martin said he hoped both parties would come together for their mutual benefit.

**MOTION:** To approve the request made by the Washington Community Housing Trust to modify condition #12 of the Special Permit for 11 affordable housing units at 16 Church Street to: Prior to the issuance of a certificate of zoning compliance, a plan for upgrading the New Preston Water Company system must be approved by the State Department of Public Health, after taking into account the increased demand load on the system created by this housing project. By Mr. Martin, seconded by Mr. Owen, and passed 5-0.

### **Revision of Zoning Regulations/Section 17.5/Special Exception**

Mr. Martin noted a public hearing had been scheduled for October 27 to consider this proposed section. He explained the purpose of the section was to empower the Zoning Board of Appeals to administer Special Exceptions in specific circumstances. In the case of single

family dwellings the ZBA would have the flexibility to deal with lot coverage and yard setback issues without having to make the determination a hardship exists as it must when it grants a variance. In the case accessory structures with historic significance, ZBA would be able to deal with setback issues in the same way. He noted the Commission worked with the ZBA for a long time to draft the proposed language.

Mrs. Friedman raised concerns about the concept of granting Special Exceptions. She thought the language was so vague the ZBA would have difficulty turning down applications. She reviewed portions of the proposed section on criteria, which she thought was so vague it was not clear what was meant. She said the ZBA was doing an adequate job under the current regulations and feared adoption of the new section would make a mockery of the Zoning Regulations.

Mr. Owen explained Section 17.5 would give the ZBA the legal rationale to make flexible decisions when the legal definition of hardship could not be met. He thought the language was purposely open ended to provide the ZBA the flexibility to deal with non conforming proposals. Mrs. Friedman asked what the phrase, "to the smallest extent possible" meant. Mr. Owen said what was reasonable would be determined by the ZBA. Mr. Martin noted that in addition to what the ZBA determined was the smallest extent possible, the Special Permit criteria in Section 13.1.B had to be met. He said he was comfortable with the ZBA determining the least amount possible on a case by case basis and reminded Mrs. Friedman that only lot coverage and setbacks for single family dwellings and setbacks for accessory structures with historical significance would be covered under 17.5. Mr. Owen felt some of the existing regulations that make sense for 50 acre properties don't necessarily make sense for half acre parcels or for properties with very old buildings. He thought the proposed section would help the ZBA find ways to accommodate different kinds of properties by taking a broader view of hardship.

Mrs. Friedman thought properties not falling into these categories would try to use this section, too. Mr White, ZBA Chairman, responded the Town Attorney had advised him the language was strong enough so the ZBA could determine an applicant did not comply or did not qualify for consideration under 17.5. He noted if the ZBA approved an application under this section, it would always approve the minimum that is reasonable. He also thought adoption of 17.5 would provide the ZBA with enough flexibility so that it could be harder on variance applications.

Mrs. Friedman thought attorneys would interpret the proposed section to the advantage of their clients and asked if the Commission would consider rescinding it if it was found to provide too much flexibility and did not work. Mr. White noted Washington was not the only town in the state to have Special Exceptions and said Atty. Byrne had incorporated as much of the language from state statutes as possible. He said the ZBA felt comfortable with the proposed section and would be willing to come to an agreement with the Zoning Commission that if it doesn't work as anticipated, both Commissions would reevaluate and possibly rescind it.

Mr. Shapiro said he agreed with Mrs. Friedman to some extent, but thought it would be worthwhile to grant flexibility when there was no hardship in the specific situations described.

This opinion was the consensus of the Commission and so it was decided to put off further discussion to the public hearing.

Mr. Martin thanked Mrs. Friedman for voicing her concerns.

MOTION: To adjourn the Special Meeting. By Mr. Fitzherbert.

Mr. Martin adjourned the Special Meeting at 8:57 p.m.

FILED SUBJECT TO APPROVAL

Respectfully submitted,

Janet M. Hill, ZEO