

November 26, 2007

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

ALTERNATES PRESENT: Mr. Dubois, Mr. Shapiro, Mr. Wyant

STAFF PRESENT: Mr. Ajello, Mrs. Hill

ALSO PRESENT: Ms. Campbell, Mr. Worcester, Mr./Mrs. Boyer, Mr. Hileman, Ms. Habib, Mr. Smith, Mr. Farmen, Mr. Solley, Mr. Papsin, Mr. Lyon, Mr. Frank, Mrs. Tagley, Mrs. Brown, Ms. Schaffner, Mrs. Gavenas, Mr. Charles, Residents, Press

PUBLIC HEARINGS

Devereux Glenholme School/81 Sabbaday Lane/Special Permit: Section 4.4.10/Theatre Addition and Horse Barn

Mr. Owen called the public hearing to order at 7:35 p.m. and seated Members Abella, Averill, Friedman, and Owen and Alternate Shapiro for Mr. Fitzherbert who had recused himself. Mrs. Friedman read the legal notice published in **Voices** on 11/14 and 11/21/07. Mr. Owen read the list of documents in the file and it was noted that the list of names and addresses of adjoining property owners and their certified mailing receipts for their notification of the hearing had since been submitted.

Mr. Worcester, architect, presented the following maps and plans; "Property Plan and Aerial Survey," by Mr. Worcester, dated 8/19/07, and four sheets of floor plans he had drawn for the theatre, sheet A-2, "First Floor Plan," sheet A-8, "East Elevation," sheet A-9, "West Elevation," and sheet A-6, "North Elevation," all revised to 3/9/06. He read the building descriptions dated 10/22/07 for the theatre and 11/2/07 for the horse barn. The 312 seat theatre and the horse barn would be for use by the school only and their construction would not result in an increase in the number of students enrolled at the school.

It was noted that the school was an existing institutional use in the R-1 District and that both buildings were considered primary buildings. Mr. Ajello said this was consistent with how the Commission had treated similar buildings at other schools in the past. The height of the proposed theatre was 40 feet and the barn was 25 feet, both measured to the peak of the highest roof.

Mr. Owen asked if exterior lighting was proposed, noting that the existing outdoor lighting at Devereux is visible from all over Town. He recommended that all of the schools look at their nighttime lighting not only to cut down on ambient light, but also as a means to decrease both energy costs and vandalism.

Mr. Owen read the 11/26/07 ZEO Report.

The need for the horse barn was briefly discussed.

Mrs. Friedman asked if there were coverage issues. Mr. Worcester noted the school owns 93 acres and coverage was not an issue.

There were no questions or comments from the public.

MOTION: To close the public hearing to consider the Special Permit application: Section 4.4.10 submitted by Devereux Glenholme School to construct a theatre addition and horse barn at 81 Sabbaday Lane. By Mrs. Friedman, seconded by Mr. Abella, and passed 5-0.

Mr. Owen closed the public hearing at 7:50 p.m.

Revision of the Zoning Regulations/Sections 13.11.1, 13.11.2, 13.11.3/Accessory Apartments

Mr. Owen called the hearing to order at 7:51 p.m. and seated Members Abella, Averill, Fitzherbert, Friedman, and Owen. Mrs. Friedman read the legal notice published in **Voices** on 11/14 and 11/21/07. Mr. Owen read the list of documents in the file.

Mr. Owen read the proposed language. He explained that the current regulation permits one attached and one detached accessory apartment per property, while the proposed revision would limit a property to only one apartment.

Mr. Owen reviewed the responses from the surrounding councils of government who found that the proposed revisions were an issue of local concern with minimum impact on adjacent municipalities and not in conflict with any of their plans or policies. He then read the following letters to the Commission; all were against the proposal: 1) from Mr. Underwood dated 11/21/07, 2) from Mr. Fairbairn, President of the WCHT, dated 11/24/07, 3) from Mr. and Mrs. Averill, dated 11/26/07, and 4) from the Washington Planning Commission dated 11/26/07.

Mr. Boyer asked what the rationale was behind the proposed changes. Mr. Owen explained how the accessory apartment regulations had evolved since the early 1980's. He said this revision would work to uphold soil based zoning, adding that it never was the Commission's intent to allow two separate single family dwellings on a single property. He noted soil based zoning would be vulnerable to undermining if it was too easy to create two single family dwelling units on one lot. Mr. Owen said he disagreed with Mr. Fairbairn's assertion that the Town housing crisis that the Zoning Regulations first addressed over 20 years ago had not abated. He noted that Zoning had, indeed, taken measures to address the housing problem since 1983 by implementing regulations to permit accessory apartments, multifamily dwellings, housing in the business districts, and the conversion of older homes and later by making further revisions to permit non profit and Town of Washington sponsored affordable housing. He provided statistics on the Town's population growth, ratio of the number of homes to the number of accessory apartments, the number of new apartments since 2002, etc. (See attached summary.) He said the Commission felt that three dwelling units on one property was too many.

Mr. Boyer noted the Zoning Regulations had allowed the creation of ten times more affordable units than the WCHT had been able to provide in the past 30 years. Therefore, he felt the proposed revisions, if enacted, would seriously decrease the number of affordable housing opportunities and so he said he strongly opposed them.

Mrs. Gavenas asked in the last 10 years how many properties had had two accessory apartments approved. This was not known, but Mr. Owen did not think it was a large number. Mrs. Gavenas responded that the Commission was proposing to eliminate a housing option

without knowing whether it had caused a problem. Mr. Owen said he did not think it unreasonable to limit properties to one apartment.

Mrs. Friedman said she had reviewed the accessory apartment regulations in other towns and had found many were more restrictive than Washington; limiting the number of bedrooms and/or the number of inhabitants, setting a smaller maximum square footage, requiring the buildings that house them to be on the tax rolls longer before they may be converted to apartments, etc. Mr. Charles noted that in Towns with smaller lot size requirements or that allow multifamily or two family dwellings, accessory apartments are not as important. He thought lot coverage and total number of bedrooms on a property should be considered when deciding how many apartments should be permitted on one property. He asked if very large houses with many bedrooms could have one accessory apartment, why couldn't a small house with only a few bedrooms have both an attached and a detached apartment. He thought the proposed revisions were exclusionary. He also thought the proposal would lead to larger properties subdividing in order to get both a guest house and a caretaker's apartment and that once subdivided, there would be no size restriction on the size of the dwelling unit.

Mr. Solley, former ZEO, agreed that the Zoning Commission had revised its Regulations in the past so there could not be two single family dwellings of comparable size on the same lot, but said most accessory apartments are clearly ancillary in size and function. He thought that problems with accessory apartments were rare relative to their benefits, and said he hoped the proposal was not in response to a single application. Mr. Owen responded that the proposed revision was not in response to a specific application, but it had been a recent application, which lead the Commission to begin a conversation about revisions to this section of the regs.

Mr. Owen agreed accessory apartments were a great benefit to the Town. He noted, however, that there were now 153 more than there were in 1983 and so it was reasonable to ask at what point they would begin to undermine soil based zoning. The soil based zoning regulations, he explained, generate many of the benefits enjoyed by the Town and the Regulations in general are in place to protect the rural character of Town. No one fully understands the "magic" that makes Washington what it is, he continued, so it is important to keep watch over how all of the pieces fit together, especially since the preservation of rural character is at least in part, dependent on the population. Therefore, an important question is, how will the housing units in Town be allocated to reach the Town's maximum population? No one sets out to become New Milford, he said, but it happens.

Mr. Boyer asked if there was public pressure for the revisions, noting he had heard only opposition. Mr. Owen said the proposal had been generated by the Zoning Commission.

Mr. Boyer said there are people who can't afford to move into Town and that accessory apartments provide both an affordable option for them and a modest income for older property owners.

Mrs. Boyer did not think that consideration of a population ceiling was relevant. She thought cluster housing could be instituted to preserve open space and rural character. She urged the Commission not to change the existing regulation.

Mr. Hileman, chairman of the Housing Commission, made a lengthy statement. He urged the Zoning Commission to table this matter for three reasons: 1) The adoption of the proposed revision could have a detrimental impact on the future availability of moderate and affordable housing in Town. He noted that at this point no one knew for sure and that his Commission had not been consulted. 2) The proposal appears to be in conflict with the Plan of Conservation and Development. He noted the Plan specifically recommends that the current regulations for

attached and detached apartments be maintained and that further provisions for such housing be made. He said the Planning Commission did not support the proposed revision. 3) He said that no case had been made to justify the proposed revision. He noted the Commission had been unable to present examples of cases where the existence of two apartments on a single property had resulted in problems or was undermining soil based zoning. He thought the Commission should do more research before it approves any revision. He said he understood that Zoning has a greater mission and must consider many townwide issues, but said he thought the sentiments of the townspeople must count, too. He said that no letters or statements of support had been received.

Mr. Owen noted the proposed language deals with the regulation, not with any violations of the regulation. He also stated the Plan of Development does not override the Zoning Regulations, but that when the Planning Commission does not support a proposed revision, a two thirds vote of the Zoning Commission is needed to approve it.

Mr. Owen suggested that the public hearing be continued, noting that would give the Commission an opportunity to meet with the Planning Commission.

Mr. Shapiro said he was not convinced that permitting two accessory apartments per property was a threat to soil based zoning and he did not think that the Commission knew how many properties had both attached and detached accessory apartments. Mr. Owen noted that the Zoning Commission had thought the proposed change would have little impact. He suggested the public hearing be continued. Mrs. Friedman noted the hearing could be continued indefinitely because its purpose was to consider the Commission's own proposal.

Mr. Averill thanked the public for attending and expressing its opinions.

MOTION: To continue the public hearing to consider the 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 to December 17, 2007 at 7:30 p.m. in the Land Use Meeting Room, Bryan Memorial Town Hall. By Mr. Fitzherbert, seconded by Mrs. Friedman, and passed 5-0.

At 8:45 p.m. Mr. Owen continued the hearing to 7:30 p.m. on December 17, 2007 in the Land Use Meeting Room, Byran Memorial Town Hall.

Revision of the Zoning Regulations/Sections 11.6.4, 12.16, 21.1.12, 21.1.28, 21.1.65, 21.1.68/Fences and Walls

Mr. Owen called the public hearing to order at 8:46 p.m. Mrs. Friedman read the legal notice published in **Voices** on 11/14 and 11/21/07. Mr. Owen then read the list of documents in the file.

Mrs. Friedman explained that the newer stonewalls in Town had concerned the Commission because they were generally too high, were squared off, built with non native stone, blocked the view from the road, etc. She noted Washington is special due to its rural character and beautiful vistas, which were being impacted by this type of "Fairfield County" wall. She noted that Mrs. Hill had measured the height of fences and walls throughout Town to help the Commission consider what was appropriate in Washington.

Mr. Owen stated the proposed revisions improved and consolidated definitions, established three categories of fence type, and required

setbacks for walls depending on their height and type. All walls under 4 ft. high and open walls under 8 ft. high would be exempt from setback requirements; all others would have to meet the front yard setback. Mrs. Friedman noted the revisions regarding setbacks applied only to those fences and walls along roads; requirements for interior fences and walls would not change.

Mr. Owen noted that non binding guidelines for the construction of fences and walls would be included in the Regulations.

Mr. Owen read the proposed definition of fence and Section 11.6.4, which, he said, was the heart of the proposed regulations.

Mr. Frank reported that the Planning Commission had discussed the proposed revisions at its last meeting and supported them.

Mr. Ajello pointed out that the proposed definition of building included an unnecessary reference to poultry, which he thought could be deleted because it was a minor change from the language proposed.

Mr. Solley stated he was concerned that the Commission might be creating a regulation that it could not easily enforce. He also noted that on his farm there are old stonewalls more than 4 ft. tall. Mr. Owen responded that none of the proposed revisions would pertain to existing walls and fences, and that, in fact, only new walls and fences along roads would be affected. He noted the Commission had studied the height of fences and walls throughout Town before deciding on the 4 ft. height referred to in the proposal. Mrs. Hill said she would include the list of townwide stonewall and fence measurements in the file.

MOTION: To close the public hearing to consider the revision of the Washington Zoning Regulations, Sections 11.6.4, 12.16, 21.1.12, 21.1.28, 21.1.65, and 21.1.68 regarding fences and stonewalls. By Mr. Fitzherbert, seconded by Mr. Owen, and passed 5-0.

Mr. Owen closed the hearing at 9:02 p.m.

Revision of the Zoning Regulations/Sections 6.6.14, 6.6.15, and 6.6.16/Non Conforming Docks

Mr. Owen called the public hearing to order at 9:02 p.m. Mrs. Friedman read the legal notice published in **Voices** on 11/14 and 11/21/07.

Mr. Owen explained the proposed revisions were a response to an enforcement problem and attempted to incorporate existing non conforming docks that don't meet the current definition of dock into the Regulations and allow them to be improved without undermining the Regulations. He read the proposed language.

Mr. Frank noted the Planning Commission had no objection to the proposed revisions. He also noted as President of the Lake Waramaug Association that the Association supported the revisions because they were consistent with the concept of controlled development along the shoreline.

There were no other questions or comments from the public.

MOTION: To close the public hearing to consider the revision of the Washington Zoning Regulations, Sections 6.6.14, 6.6.15, and 6.6.16 regarding non conforming docks. By Mr. Owen, seconded by Mr. Fitzherbert, and passed 5-0.

Mr. Owen closed the public hearing at 9:07 p.m.

REGULAR MEETING

Mr. Owen called the Meeting to order at 9:07 p.m.

Consideration of the Minutes

The October 22, 2007 Regular Meeting minutes were accepted as corrected. On page 6 in the fourth line of the second full paragraph, change: "as had been endorsed" to: "...zoning, which had also been endorsed...."

MOTION: To accept the 10/22/07 Regular Meeting minutes as corrected. By Mr. Owen, seconded by Mrs. Friedman, and passed 5-0.

Mr. Fitzherbert left at this point and Mr. Shapiro was seated.

New Application

Rumsey Hall School/184 Romford Road/Special Permit: Section 4.4.10/Construct Two Dormitories and Hockey Rink

Mr. Farnen, Headmaster, Ms. Habib, Business Manager, and Mr. Smith, Surveyor, were present. Mr. Owen noted the discussion at this time would be to schedule the public hearing. He then read the 11/26/07 ZEO Report, which stated a variance for coverage was required; the proposed buildings would result in 13.9% coverage of the school's north parcel, although overall coverage of both of the school's parcels would total only 8.9%. It was noted in that case, the Commission could schedule the hearing for the next meeting on December 17, but would not be able to vote on that date because the ZBA would not act on the variance request until December 20. It was decided to hold a Special Meeting at 7:30 p.m. on Monday, January 7, 2008 to conduct the required public hearing. This will be cancelled if the coverage variance is not granted.

Other Business

Myfield, LLC/7 Mygatt Road/Revision of Approved Site Plan: Mrs. Hill noted that Mr. Fowlkes had called to apologize that he was not able to attend tonight's meeting. She also noted that the Inland Wetlands Commission had approved the revision of the site plan. Mr. Owen said a public hearing was required and reviewed the file to make sure that all of the information needed had been submitted. The items in the file were noted: 1) the 11/19/07 letter from Mr. Gitterman requesting that modification of the approved site plan be considered at the 11/26/07 meeting, 2) the \$50 revision fee, 3) the site plan, and 4) elevations, . Mr. Owen noted the information submitted was insufficient. At the preliminary discussion the Commission had requested complete floor plans and construction specs for each unit. He noted the revision proposed was more than just a minor revision. Mr. Ajello suggested the request was actually a new application. It was the consensus of the commissioners that because significant changes were being proposed the request for revisions should be considered a new application. It was noted again that since the issue of comparability would have to be resolved, full drawings, specs, and floor plans for each unit were required. Mr. Owen said the Commission's attorney would attend the public hearing to consider the new application. Mrs. Friedman noted that the

Commission was not bound to approve the proposed revisions just because it had approved the original site plan. Mrs. Hill noted that technically since a new application had not been submitted, a public hearing could not be scheduled at this time.

Revision of the Zoning Regulations/Sections 13.11.1, 13.11.2, and 13.11.3/Accessory Apartments: The public hearing was continued to 12/12/07 at 7:30 p.m. in the Land Use Meeting Room.

Pending Application

Devereux Glenholme School/81 Sabbaday Lane/Special Permit: Section 4.4.10/Construct Theatre Addition and Horse Barn: Mr. Averill noted this was a positive proposal that would have no visual impact from the road. After a brief discussion on the importance of outdoor lighting, the commissioners decided to condition approval on compliance with Section 12.15.

MOTION: To approve the Special Permit application: Section 4.4.10 submitted by Devereux Glenholme School to construct a theatre addition and horse barn at 81 Sabbaday Lane with the condition that all exterior lighting shall comply with the requirements of Section 12.15. By Mr. Owen, seconded by Mrs. Friedman, and passed 5-0.

Other Business

Revision of the Zoning Regulations/Sections 11.6.4, 12.16, 21.1.12, 21.1.28, 21.1.65, 21.1.68/Walls and Fences:

MOTION: To approve revisions to Sections 11.6.4, 12.16, 21.1.12, 21.1.65, 21.1.28, and 21.1.68 of the Washington Zoning Regulations to provide non binding guidelines for fences and walls in keeping with the rural character of Washington, update and clarify the definitions of Building, Structure, Fence, and Wall, distinguish between open, semi- open, and closed fences, specify the method for measuring the height of a fence or wall, and change the setback requirements for fences and walls depending on whether they are open, semi-open, or closed. By Mrs. Friedman, seconded by Mr. Abella, and passed 5-0.

Revision of the Zoning Regulations/Sections 6.6.14, 6.6.15, and 6.6.16/Non Conforming Docks:

MOTION: To approve revisions to Sections 6.6.14, 6.6.15, and 6.6.16 of the Washington Zoning Regulations to define non conforming docks, specify how their surface area shall be measured, and specify under what circumstances they may be enlarged. By Mr. Owen, seconded by Mr. Abella, and passed 5-0.

Revision of the Zoning Regulations/Section 13.9/Inns: At the last meeting it had been noted this section needed updating and clarification. Mrs. Hill circulated draft revisions upon which to begin discussion. Mr. Owen noted he would not be against the operation of inns in the R-1 District as they have a long history in Town and have provided significant employment opportunities. He also noted that the inns on Lake Waramaug had had no negative impact on surrounding real estate values. Definitions for "inn" and "bed and breakfast" were also drafted. Members were asked to review the proposed language so that it may be discussed at the next meeting.

Privilege of the Floor

Mr. Papsin asked if the Fire Departments had reviewed the proposed new buildings for Devereux Glenholme and Rumsey Hall Schools. Mr. Owen and Mrs. Hill stated that the Fire Marshall must approve the construction plans as part of the Building Permit process and Mr. Ajello reported that the proposed plans call for Rumsey to install two 20,000 gallon water storage tanks. The Zoning Commission will request comments from the Fire Dept. on similar future applications.

Mr. Papsin also thought that attached and detached accessory apartments could provide housing for firemen, noting the Fire Dept. currently needs manpower. He said he agreed with the WCHT's opinion that the Regulations should not be revised to permit only one apartment per property. He wished accessory apartments could be included in the Town's affordable housing stock, but Mr. Shapiro pointed out that they would have to be deed restricted before they could be counted. Mr. Charles said he considered apartments to be a stop gap measure with the goal being home ownership.

Communications

2008 Calendar: The proposed 2008 Calendar of meeting dates was approved by consensus.

Special Meeting: Mr. Owen reminded the commissioners of the Special Meeting to be held at 7:30 p.m. on January 7, 2008.

Mr. Owen reported that he had met with Mr. Hileman of the Housing Commission and will attend the next WCHT meeting. He thought it was a good idea to keep the lines of communication open between the Zoning Commission and these other agencies.

Enforcement

Moore/25 Litchfield Turnpike: Mr. Ajello said a Special Permit application for Shop and Storage Use by Contractors and Building Tradesmen would be submitted for the next meeting.

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

Mr. Owen adjourned the meeting at 9:58 p.m.

FILED SUBJECT TO APPROVAL

Respectfully submitted,

Janet M. Hill, Land Use Coordinator