

December 15, 2008

Public Hearings – Regular Meeting

7:30 p.m.

Land Use Meeting Room

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

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

STAFF PRESENT: Mr. Ajello, Mrs. Hill

ALSO PRESENT: Mr./Mrs. Federer, Mr./Mrs. Peacocke, Mr. Carey, Papsin, Mr. Carey, Mr. Szymanski, Mrs. Wildman, Mr. O'Neill, Mr. Harris, Mr. Worcester, Mrs. Hardee, Atty. Fisher, Mrs. Solomon, Mrs. McDonald, Mr. Mustich, Mr./Mrs. Rickert, Atty. Strub, Atty. Hill, Mr. Charles, Ms. Zinick, Residents, Press

Mr. Owen called the Meeting to order at 7:30 p.m. and seated Members Abella, Averill, Friedman, Fitzherbert, and Owen.

PUBLIC HEARINGS

Donovan/53 Kinney Hill Road/Special Permit: Section 13.11.3/ Detached Accessory Apartment

At 7:30 p.m. Mr. Owen reconvened the Public Hearing.

Mr. O'Neill, architect, reviewed the revisions to the plan that were made in response to the discussion that took place at the last session of the Hearing. The floor plans, A1.01, by Steven Harris Architects, revised to 12/15/08 were studied. 1) The porch between the main dwelling unit and the larger of the apartment units was enclosed with glazed panels. That accessory apartment could then be considered attached because it shared a wall with the main unit. 2) A kitchenette and mud room were added to the guest quarters to bring this unit over the 400 sq. ft. minimum size requirement for an accessory apartment. Because the porch connecting this area with the attached apartment would be screened, it was considered a detached apartment.

It was noted that all of the units share a single driveway.

There were no questions or concerns raised by the commissioners or the public.

MOTION: To close the Public Hearing to consider the Special Permit application: Section 13.11.3 submitted by Mr. Donovan for a detached accessory apartment at 53 Kinney Hill Road. By Mr. Owen, seconded by Mr. Fitzherbert, and passed 5-0.

Mr. Owen closed the Public Hearing at 7:35 p.m.

Devereux Glenholme School/81 Sabbaday Lane/Special Permit: Section 4.4.10/Performing Arts Center

Mr. Owen called the Public Hearing to order at 7:36 p.m. He then read the 12/15/08 ZEO Report, which noted the application proposed a redesign of the arts center originally approved in 2007.

Mrs. Friedman read the legal notice published in Voices on 12/3 and 12/10/08.

Mr. Owen read the list of the documents in the file.

Mr. Worcester, architect, reviewed the site plan, "Property Plan," PP-1, dated 8/19/08, the elevations, A-2 and A-3, by Mr. Worcester, dated 11/24/08, and the floor plans, A-1, dated 11/24/08. He noted the theater would be moved to the existing soccer field near Holly House where the parking would be separated from the road by the existing treed buffer. He pointed out the existing parking areas that would be used. He said the proposed building was slightly smaller than the one approved previously and that it measured 34 ft. to the highest peak.

Mrs. Friedman asked what materials would be used to construct the building. Mr. Worcester said it would be stucco to match the surrounding structures.

Mr. Owen asked if the proposed lighting met the residential lighting requirements. Mr. Ajello said it was not shown on the plan, but it was detailed in the text submitted, and it did meet the Regulations. Mr. Worcester said the outdoor theater lights would be on only when the theater was in use and that the lights on the building would be laterally shielded sconces.

Mr. Ajello said access by the Fire Dept. was not an issue.

There were no questions from the public.

MOTION: To close the Public Hearing to consider the Special Permit application: Section 4.4.10 submitted by the Devereux Glenholme School for a performing arts center at 81 Sabbaday Lane. By Mr. Averill, seconded by Mr. Abella, and passed 5-0.

Mr. Owen closed the Public Hearing at 7:45 p.m.

REGULAR MEETING

Mr. Owen called the Meeting to order at 7:47 p.m.

Consideration of the Minutes

The 11/24/08 Public Hearing-Regular Meeting minutes were accepted as corrected.

Page 7: Sentence beginning in the first line should be: "Mrs. Friedman stated that even if the applicant's numbers for the main building were cut in half; 238 spaces reduced to 119, the 56 spaces provided near the main building by the applicant would still be inadequate."

Page 9: 10th line: Insert: "stone" before "balustrades." 10th line from bottom: Delete: "driveway is at a right angle to the road and the...."

Page 15: Under Privilege of the Floor: Last sentence should be: "Mr. Owen noted this matter would be taken up at a different time."

MOTION: To accept the 11/24/08 Public Hearing-Regular Meeting minutes as corrected. By Mrs. Friedman, seconded by Mr. Owen, and passed 5-0

Pending Applications

Donovan/53 Kinney Hill Road/Special Permit: Section 13.11.3/Detached Accessory Apartment

MOTION: To approve the Special Permit application: Section 13.11.3 submitted by Mr. Donovan for a detached accessory apartment at 53 Kinney Hill Road. By Mr. Owen, seconded by Mr. Fitzherbert, and passed 5-0.

Devereux Glenholme School/81 Sabbaday Lane/Special Permit: Section 4.4.10/Performing Arts Center

MOTION: To approve the Special Permit application: Section 4.4.10 submitted by the Devereux Glenholme School to construct a performing arts center at 81 Sabbaday Lane. By Mr. Averill, seconded by Mr. Abella, passed 5-0.

Conlon/6 Valley Road/Special Permit: Section 13.11.3/Detached Accessory Apartment:

It was noted the Public Hearing is scheduled for January 26, 2008 at 7:30 p.m.

Wykeham Rise, LLC./101 Wykeham Road/Special Permit: Sections 4.4.1 and 10.9/Inn:

Mr. Owen read a statement for the record. It concluded with a motion to deny the application. (See attached Addendum.)

MOTION: To deny the Special Permit application: Sections 4.4.1 and 13.9 submitted by Wykeham Rise, LLC. for an inn at 101 Wykeham Road. By Mr. Owen, seconded by Mrs. Friedman.

The commissioners gave their reasons in support and against the application.

Mr. Shapiro stated that he agreed with Mr. Owen's remarks and had been troubled by many aspects of the application as reflected in Mrs. Friedman's memo submitted at the last meeting. He said he was still troubled by the lot coverage issue and read from Atty. Zizka's 11/24/08 letter. He said the applicant had added parking spaces on the grass because there was reason to believe these spaces would be needed to accommodate additional vehicles from time to time and that the more he reviewed the record, the clearer it was from the evidence that these additional spaces would, indeed, be needed. This being so, he said, according to Atty. Zizka's letter these spaces had to be counted as lot coverage and so the application violated the lot coverage regulations.

Mr. Fitzherbert disagreed. He referred to the past history of the property. He said it was not unusual for the Zoning Commission to work with an applicant who revised his application with the intent of meeting the Regulations. He also thought it was unfair that the newspapers had focused on the opposition to the application. He stated the proposed inn would be extremely good for Washington's economy, that it was a good use of the property, that 250 letters in support had been received, that it would provide needed jobs, and that it would be an asset the community could be proud of. He also thought that a 44 room inn was not that large. He agreed with Mr. Owen that some of the applicant's statements had been unclear. He thought the proposed Overflow Parking Plan was an over reaction by the applicant and that the additional

cars could have parked on the grass as is done at many other places in Town. He thought the denial of the application would be a huge loss for the Town and said he would worry about potential future uses of the property.

Mr. Averill agreed with many of Mr. Owen's points. He said the application had evolved so much that it would now be difficult to know what to enforce. He said he had a problem with the intensity of the proposed businesses associated with the inn; the restaurant, bar, health club, and spa, and asked if a bowling alley would be OK in this district if it was associated with an inn. He noted the uses associated with the inn would not be allowed on their own in the district. He did not think the inn would be economically viable and that the enterprise would actually result in a restaurant/bar/spa with an associated inn rather than vice versa. He said that too much was proposed for the particular location and that it was not in keeping with the scale and size of the neighborhood. He said that it had been the original intent of the Regulations to allow inns only on state roads and that he had agreed this had been the intent when the Commission had discussed it. He said he could vote against the application on this issue alone. In conclusion, he stated that he could not in good conscience vote for the application.

Mr. Abella said that Mr. Owen had given a good summary and that it was a very complicated application. He agreed with Mr. Fitzherbert, however, saying this was a quality product proposed in a location where there was already a school. He thought its proposed size pushed the limits, but that it was still within the Zoning Regulations, especially with the buffering proposed. He said the inn would be good for the Town and would qualify for approval under the Regulations.

Mrs. Friedman disagreed with Mr. Fitzherbert. She stated that the Commission had been instructed by its attorney that economics and the number of letters in support were not Zoning's concerns and that the Commission must apply its Regulations. She said she had written her memo with 14 reasons to deny the application based on the Zoning Regulations and she stood by these reasons. She said the proposal was inappropriate for this location and she would vote to deny the application.

Vote: 3-2. (Motion approved, Application denied)

Mr. Owen noted that the commissioners had adequately stated their reasons for their votes and he thanked everyone who had taken part in the zoning review process.

New Application

Moore/127 Blackville Road/Special Permit: Section 13.11.3/ Detached Accessory Apartment:

Mr. Owen read the 12/15/08 ZEO Report. Mr. Ajello said the application was not complete at this time; that the elevations and the affidavit from the owner that he would reside on the premises for the duration of the permit were needed before the legal notice was published. He also said the applicant would have to convince the Commission that the apartment would be subordinate to the main dwelling, which would be set back further from the road and at a lower elevation than the apartment. Ms. Zinick stated the DOT had no problem with the proposed driveway and that she would get written confirmation for the hearing. The Public Hearing was scheduled for January 26, 2009.

Other Business

Revision of the Zoning Regulations/Uses Permitted in the Woodville Business District/Addition of Restaurants:

Mr. Owen read the current section 10.4.1.a. As had been discussed at the September meeting, he proposed that the last phrase, “but excluding restaurants and fast food establishments” be deleted and “eating and drinking establishments” be added to the list of uses permitted by Special Permit. Mrs. Hill had researched the 2000 minutes and had found that back then the Commission had thought that restaurant traffic, parking, and late business hours would not be compatible with the neighborhood. However, the current commissioners no longer had those concerns because there had always been a restaurant in this district and there had never been any complaints about it. Mrs. Friedman agreed that eating and drinking establishments should be permitted by Special Permit in Woodville and recommended that the Regulations be revised so that they would also require Special Permits in the New Preston and Depot business districts. Mr. Wyant thought the existing regs worked well, but Mr. Shapiro, Mr. Abella, and Mr. Averill agreed that restaurants should be a Special Permit use in all of the business districts. Mr. Fitzherbert thought the Commission had been considering changes to the Woodville District and should work now on that one topic. Mr. Owen had no problem proceeding with both. Mrs. Friedman noted that how the Regs deal with eating and drinking establishments is only one example of the inconsistencies between the districts, and added this was a problem that must be addressed. Mr. Owen asked her to bring a list of her concerns to the next meeting. It was the consensus to schedule a public hearing in February to consider the change to Section 10.4.1.a. Referrals will be made to the Planning Commission and COG’s.

MOTION: To proceed with the noticing and scheduling of a Public Hearing to consider the following revision to the Woodville Business District regulations: Section 10.4.1.a: Add: Eating and Drinking Establishments. By Mr. Owen, seconded by Mr. Averill, and passed 5-0.

The 2009 Calendar of Meeting dates was approved.

MOTION: To approve the 2009 Calendar. By Mr. Owen, seconded by Mr. Fitzherbert, and passed 5-0.

Possible Revisions to the Regulations/Priorities:

1) Noise Generating Equipment: Mr. Owen thought the Commission should either go back to the original language or create actual standards or procedures the ZBA can follow when determining whether to grant a Special Exception for noise generating equipment. He explained that because the current language states that a Special Exception may be granted if the proposed location would create less noise impact than the conforming location, the regulation as written could not be applied by the ZBA. It was noted it had been decided previously that a) Mr. Owen would discuss this matter with Mr. Sedito, ZBA Chairman, and b) the Commission would go back to the original language, which required this equipment to be placed closer to the principal structure served than to any setback lines. Mr. Owen said he would have draft language for the January meeting.

2) Business Signs in Residential Districts: Mr. Owen noted the current Regulations state that there may be no business signs in residential districts, but he thought there were some businesses that need signs. Mrs. Friedman thought that most of these were institutional uses. Mr. Owen suggested that the uses allowed to have signs be listed and that the size of the sign be limited to 4 sq. ft. He said the current reg that residential lots may have only one non commercial sign not over 2 sq. ft. would remain as would the requirements for temporary signs. Size and time limits for temporary signs were discussed. While most favored allowing only one contractor’s sign per property and requiring that it be removed after one month or when the work is completed, whichever comes first, it was agreed it would be an enforcement nightmare. Mr. Owen asked the commissioners to review for the next meeting the draft list of businesses that would be permitted to have signs in the residential districts.

3) Preservation of Stonewalls: This was an issue that Mrs. Hill had added to the list in response to a call from a newspaper reporter and

because she had learned several other towns had enacted regulations to preserve existing stonewalls as one way to preserve rural character. It was the consensus this was not a priority at this time.

4) Dance Studios in the R-1 District: It was noted that Mr. Owen and Mr. Ajello had not met with representatives from Pilobolus.

Privilege of the Floor

Mr. Papsin agreed with the Commission that noise generating equipment should be kept close to the house it serves.

Mr. Papsin asked if changing restaurants to a Special Permit use would keep Dunkin' Donuts out of the residential zones. Mrs. Friedman noted restaurants are only permitted in the business districts. Mr. Owen explained that the Regulations could not distinguish between a specific business use and the owner of that use. He noted, however, that the Commission had forbidden drive-through restaurants in Town and said that should eliminate some of the attractiveness of fast food ventures. Mrs. Friedman noted that other restaurant restrictions, such as no disposables, had been considered, but none had been agreed upon. Mr. Papsin asked if the proposed scenic road designation for Rt. 202 in Marbledale would have any affect on restaurants. Mr. Owen said it would not.

Communications

Mr. Owen noted that Mr. Talbot's 3/3/08 letter to Mrs. Hill about the creation of parcels was still pending and would be discussed at the next meeting.

Enforcement

Mrs. Friedman asked Mr. Ajello to contact Washington Pizza about its backlit signs.

Mr. Ajello circulated a photo of the stairway constructed within 75 ft. of the lake shore by Mr. Liljequist. He will contact the owner about the Special Permit requirements.

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

Mr. Owen adjourned the Meeting at 9:06 p.m.

FILED SUBJECT TO APPROVAL

Respectfully submitted,
Janet M. Hill
Land Use Coordinator

ADDENDUM

I am a strong believer in the place of inns in Washington, both historically and potentially. The hospitality business has been a big part of the

town's economic and civic life for more than a century, just as schools and farms and shops and weekenders have been. I am convinced that inns were very much in the minds of the authors of our zoning regulations, back in the nineteen-thirties, and that they have been in the minds of subsequent zoning commissioners, at least until very recently. One of the things that struck me in reading Janet's excellent summary of the history of the commission's treatment of inns is the extent to which parts of our regulations seem to have evolved almost by random mutation. Even so, inns have always been included, and have, therefore, always been part of the town's conception of "rural character" — the indefinable but cherished local quality that we are charged to protect. Rural character, in my view, is not strangers living in widely separated houses on seldom-traveled roads. Rural character is, more than anything else, a spirit of community and interdependence. It's the town hall and the grocery store and the firehouse and the nursery school and the library and the Gunnery and the pizza place and the town beach and Devereux-Glenholme and the Mayflower, along with all the residents and visitors who regularly come together in those places. The rural character of Washington would be terminally diminished if such places were replaced with empty fields, even though local decibel levels and traffic counts would decrease.

Nevertheless, the regulations require us to consider not inns in general but specific applications for specific locations. That's what we have been doing since we began, back in July. And the result of that long process, for me, has been the unhappy but inescapable conclusion that I cannot support this application.

My first main concern regarding the Wykeham Rise application has to do with a realization I began to come to terms with shortly before our meeting last month, when I was rewriting Valerie's list of possible conditions of approval. I was able to identify a number of issues that continued to trouble me, but, in the end, I have been unable, even with help from Janet, Mike, and Attorney Zizka, to persuade myself that it would be possible to create plausible, enforceable conditions by which the commission could be assured of resolving all of them.

The most important of those remaining issues, in my mind, have to do with the requirements of Section 13.1.b.2 of the special permit regulations, and specifically with the size, scale, proportion, and appearance of the proposed use, and with Section 13.1.b.5, which concerns the size and other characteristics of the lot. Unlike some, I believe that inns belong in the R-1 zone, as our regulations state; yet I have, finally, been unable to assure myself that this particular inn would be appropriate for this particular site. The proposed plan in its final form comes very close to the absolute limit of what the regulations allow, in terms of lot coverage, yet in order to keep the plan within that limit — while also addressing other concerns of various commissioners and neighbors, as well as ensuring that the proposed inn would remain a viable business — the applicant had to be aggressive in removing, shrinking, and modifying structures, driveways, parking areas, and other features. This process improved the proposal in many ways, by correcting serious flaws in the original plan, but it harmed it in others, and it also left an extremely narrow margin of error, both for the applicant and for the commission. It also raises finally unanswerable doubts in my mind regarding precisely what the town might reasonably expect of the inn as a functioning enterprise.

The submission of the applicant's 55-space "Overflow Parking Plan," at the final session of the public hearing, contributed to making this issue irresolvable for me. I agree strongly with Attorney Zizka's reading of our parking regulations, and with his opinion that the occasional parking of cars on grass should not be considered to constitute lot coverage by the town's definition, but I also heed his remarks, in his letter of November 6, 2008, about "conditions that do not allow for easy enforcement" yet are essential to approval. To me, the "Overflow Parking Plan" unavoidably suggests that the applicant anticipates the possibility of large parking shortfalls, and this in turn raises a clear danger that the likely actual use of the property is understated by the rest of the proposal. The existence of the "Overflow Parking Plan" as an element of the proposal, furthermore, makes this problem permanent. I don't believe that this difficulty can be removed with an enforceable condition

of approval, or even a series of conditions of approval.

This leads directly to another major concern, which is that the proposal raises what might be called a meta-enforcement issue, since the commission and its staff, if the application should be successful, would face not only the difficulty of holding the applicant and his successors to the terms of the approval but also the difficulty of determining precisely what those terms had been. As Janet has pointed out, the applicant's proposal is not contained in a single, comprehensive document; it is spread through two large storage boxes and several additional thick file folders, as well as numerous tape recordings and many pages of meeting minutes and a large assortment of drawings and superseded drawings. To determine the precise final form of what has been proposed — and therefore what must be required of the applicant, should the project be approved — would necessitate an almost archaeological study of a large collection of materials, and, even then, achieving absolute certainty would be impossible, since a number of the apparently relevant items are confusing or contradictory. An approval, in my opinion, would require the commission to be able to agree on which statements and documents and concepts provided by the applicant are still current, and therefore part of the proposal, and which are not, and then to resolve any differences among those. Even now, when the file and the testimony are relatively fresh in everyone's mind, I am unable to do that for myself. The applicant's letter of October 17, 2008 — the one that contains, among other things, the statement about use of the inn and the swimming pool by children, a statement that seemed to baffle even the applicant and his advisers — is an example. Are the conditions described or offered in that letter to be treated as a part of the proposal, or are they something else? It is notable that even such a relatively simple question as whether or not the main building is intended to contain a swimming pool was not resolved until near the end of the public hearing and, even then, required discussion.

My other principal remaining concerns are closely related. They have to do with the very large size of the proposed main building, the large number of proposed guest rooms, the possible impact on parking requirements of the use of the function room by patrons other than overnight guests, the minimal adequacy of the main entrance/exit, what I believe to be the inferiority of the current single-access driveway scheme to either of its one-way predecessors, and the arbitrary-seeming or deadline-driven nature of a number of later modifications to the plan. If almost any of these concerns had been the only concern, the dilemma, for me, would have been reduced; but all of these concerns, taken together, add up, in my mind, to a problem too large to be either overlooked or solved with enforceable conditions of approval. I deeply respect Gary's contrary view regarding this application, and not only because I agree with almost all of it. In the end, though, the arguments I have found the most affecting have been concerns that Janet expressed as we discussed possible reasons for approval or denial, and that Ralph expressed at our November meeting, as well as further contemplation of our correspondence from Attorney Zizka and my own brooding about the proposal and the file.

All of this makes me unhappy for many reasons. I am disappointed that the applicant did not begin with a smaller, more complete proposal, on a scale that I could have voted confidently to approve. But I don't see any way around that, and I move that we deny the application.

David Owen
December 15, 2008