

December 28, 2009

Present: David Owen, Ray Reich, Gary Fitzherbert, Ralph Averill, Lou Abella

Alternates Present: Andy Shapiro, Alt., A.J. Dubois, Alt., Harry Wyant Alt.

Absent:

Staff Present: Janet Hill, Shelley White

Others Present: Wendy Federer, Valerie Anderson, Harold Tittmann, Architect, Attorney Rob Fisher, Dick Carey, Bob Papsin, Holly Flor, Justin Gabrenas, Residents, Press

Mr. Owen called the meeting to order at 7:32 pm.

PUBLIC HEARINGS

Seated: Mr. Owen, Mr. Reich, Mr. Fitzherbert, Mr. Averill, Mr. Abella

Revision of Zoning Regulations/Eating and Drinking Establishments in the New Preston and Depot Business Districts by Special Permit:

Mr. Owen read the legal notice published in Voices on December 16 and December 23, 2009 and the list of documents on file for this application. Mr. Owen read a memo, dated 12/24/09 from the Planning Commission that contained the motion made by the Planning Commission to approve the proposed amendments to Sections 7.3.7, 7.14.17, 8.3.7, 8.4.20 and 9.4.1.d. Mr. Owen read a letter from Dan McGuinness, Director of the Northwestern Connecticut Council of Governments, dated 11/19/09. Mr. McGuinness stated that 1) “restaurant” and “eating and drinking establishment” should be defined. 2) The existing regulations contain parking requirements for restaurants but none for eating and drinking establishments and that the “Commission should clarify how many parking spaces will be required for an “eating and drinking establishment” and 3) There are no unique standards for eating and drinking establishments other than the standard special permit requirements and Mr. McGuinness questions why the Commission is not “considering imposing additional requirements on eating and drinking establishments” which is a business use in a business district. Ms. Valerie Friedman reiterated why she thought it important to revise these regulations. She stated that the Special Permit Requirement already exists in the Marbledale and Woodville Business Districts but not in Washington Depot or New Preston. She stated that revising these sections would make the language uniform throughout and requiring a Special Permit for an eating and drinking establishment would give the Zoning Commission some control over the way a business would operate and discourage inappropriate uses. There was a brief discussion as to whether the language in the regulations distinguishes between a restaurant and an eating and drinking establishment. Susan Bishop Wrabel of Baldwin Hill Road, requested the differentiation between a restaurant with a certain amount of seating and parking as opposed to a counter service or as opposed an eating and drinking establishment that serves its patrons through drive thru. Mr. Owen read definitions of a restaurant, take out restaurant, and eating and drinking place from The New Illustrated Book of Development Definitions. He stated that he agreed with Mr. McGuinness that the terms need to be defined. There was a discussion regarding whether or not to proceed with approving the revisions before or after the terms are defined. The majority of the Commissioners agreed that they should proceed with the revisions and define the terms later. Mr. Fitzherbert stated that he disagreed because he did not see the purpose of the revision and that the existing regulations have been working. He stated that he thinks that this revision would add extra expense and time for the applicant. Ms. Hill stated that she thought the benefit of the revision would be that the business that is being applied for would have to conform to what already exists in the neighborhood. Mr. Reich stated that

he was not clear as to the advantages of the revisions but would like to hear more before making his decision. Mr. Averill stated that he could see both sides and would like to see consistency in the regulations but feels the terms need to be defined.

Motion:
to close the Public Hearing to consider the Revision of the Zoning Regulations: Section 7.3.7, 7.4.17, 8.3.7, 8.4.20, 9.4.1.a, 9.4.1.d to require a Special Permit for eating and drinking establishments in all business districts and minor revisions to make the language uniform throughout
by Mr. Owen, seconded by Mr. Fitzherbert, by 5-0 vote.

Mahan/54 Sunny Ridge Road/ Special Permit: Section 13.11.3/Detached Accessory Apartment:

Mr. Owen read the legal notice published in Voices on December 16 and December 23, 2009 and the list of documents on file for this application. Mr. Harold Tittmann, Architect, was present to represent Mr. Mahan for this application. Mr. Tittmann first presented the Property/Boundary Survey, prepared for Christopher Mahan, 54 Sunny Ridge Road, dated June 2009, by T. Michael Alex, which had been reviewed at the previous Zoning Meeting, but when it became clear that the Commission did not think the driveway shown complied with Section 13.11.3.h, he presented a revised Property Boundary Survey (rec'd 12/28/09). Mr. Tittmann explained that the driveway would serve both the main house and the garage/accessory apartment. He stated that the wetlands were considered when locating the shared driveway. There was a discussion regarding the distance of the house to the garage/accessory apartment. Mr. Tittmann stated that the garage was approximately 120 feet from the main house. It was the consensus of the Commission that the opening in the rock wall adjacent to the garage, which is currently being used by construction vehicles, should be closed as a condition of approval. There were no comments from the public.

Motion:
to close the Public Hearing to consider the Special Permit Application submitted by Mahan, under Section 13.11.3 for Detached Accessory Apartment at 54 Sunny Ridge Road,
by Mr. Owen, seconded by Mr. Fitzherbert, by 5-0 vote.

Lake Waramaug Country Club/22 Golf Links Road/Special Permit: Section 6.4.13/ Construct Storage Shed:

Mr. Owen read the legal notice published in Voices on December 16 and December 23, 2009 and the list of documents on file for this application. Mr. Justin Gabrenas was present to represent Lake Waramaug Country Club for this application. Mr. Gabrenas explained that the shed is an approximated 500 square foot, prefabricated, self contained, storage building that will be used to store pesticides for the golf course. There were no comments or questions from the public.

Motion:
to close the Public Hearing to consider the Special Permit Application submitted by Lake Waramaug Country Club, under Section 6.4.13 to Construct Storage Shed at 22 Golf Links Road,
by Mr. Abella, seconded by Mr. Owen, by 5-0 vote.

REGULAR MEETING

Mr. Owen called the regular meeting to order at 8:22 pm.

Consideration of the Minutes

The November 23, 2009 Zoning Commission Regular Meeting Minutes were considered:

Corrections:

Page 2: under Possible Revision of the Zoning Regulations/Section 13.9/To Allow Inns on Town Roads:, 2nd sentence, should read: Both Mr. Fitzherbert and Mr. Reich said they had no reason to recuse themselves.

Motion:

to accept the Zoning Meeting Minutes of November 23, 2009, as amended,
by Mr. Owen, seconded by Mr. Fitzherbert, by 5-0 vote.

Pending Application(s)

Mahan/54 Sunny Ridge Road/Special Permit: Section 13.11.3/Detached Accessory Apartment:

There was a brief discussion regarding closing the rock wall by the garage as a condition of approval.

Motion:

to approve Special Permit Application: Section 13.11.3 submitted by Mahan at 54 Sunny Ridge Road for Detached Accessory Apartment, based on the revised Property Boundary Survey, prepared for Christopher Mahan, by T. Michael Alex, dated June 2009, with the condition that the opening in the stone farm wall next to the accessory garage be closed,
by Mr. Owen, seconded by Mr. Fitzherbert, by 5-0 vote

Lake Waramaug Country Club/22 Golf Links Road/Special Permit: Section 6.4.13/Construct Storage Shed:

There were no further comments from the Commission.

Motion:

to approve Special Permit Application: Section 6.4.13 submitted by Lake Waramaug Country Club at 22 Golf Links Road to Construct a Storage Shed,
by Mr. Owen, seconded by Mr. Averill, by 5-0 vote.

New Application(s)

Lancaster/244 West Shore Road/Special Permit: section 6.4.6/Fences on the Lake Waramaug Side of West Shore Road: Mr. Bob Papsin was present to represent this application. He submitted pictures of the property and the two separate types of fences the property owner would

like to install. He explained that he has consulted with the Department of Transportation and has met their setback requirements. Ms. Hill stated that the proposed picket fence is 42 inches above grade and that the proposed split rail fence along the side of the property is 48 inches high to the top of the posts and that a gate across the driveway is also being proposed.

Motion:

to schedule a Public Hearing on January 25, 2010 to consider the Special Permit Application submitted by Lancaster/244 West Shore Road/Section 6.4.6/Fences on the Lake Waramaug Side of West Shore Road,
by Mr. Owen, seconded by Mr. Reich, by 5-0 vote.

Motion:

to add subsequent business to the Agenda, under section V. Other Business as item E. Election of Officers,
by Mr. Owen, seconded by Mr. Fitzherbert, by 5-0 vote.

Other Business

Revision of Zoning Regulations/Eating and Drinking Establishments in the New Preston and Depot Business Districts by Special Permit:

Mr. Owen suggested that the Commission revisit the issue of defining the terms of “Eating and Drinking Establishments” and “Restaurants” at a later date.

Motion:

to approve the Revision of Zoning Regulations Sections/ 7.3.7, 7.4.17, 8.3.7, 8.4.20, 9.4.1.a, 9.4.1.d to allow Eating and Drinking Establishments in New Preston and Depot Business Districts by Special Permit,
by Mr. Owen, Seconded by Mr. Averill, by 5-0 vote.

Possible Revision of The Zoning Regulations/Section 12.14 Re: Special Exceptions for Generators and Other Noise Generating Equipment:

Mr. Owen stated that the Zoning Commission would wait for the Zoning Board of Appeals to respond.

Preliminary Discussion re: Lighting of St. John’s Church – application and possible revision of the Regulations:

Ms. Holly Flor was present to represent St. John’s Church. She stated that the sign located at the front of the Church is on State property and has been grandfathered in. The lighting of the sign has been adjusted and she submitted a photo of the lighting approved by the Historic District Commission. She stated that the church is looking to light the property for security reasons. She stated that it would be beneficial to have a better definition of what “security lighting” means. There was a discussion regarding insurance. Ms. Flor discussed the different options of lighting the outside of the church. Mr. Owen explained that the lights must be dark sky friendly and must light the church only. Ms. Hill asked if the unauthorized lighting already installed would be removed. Ms. Flor said it had been turned off.

Possible Revision of the Zoning Regulations/Section 13.9/To Allow Inns on Town Roads:

Mr. Owen stated that Mr. Fitzherbert and Mr. Averill had a subcommittee meeting in an effort to draft a definition for “inn” in the Zoning Regulations. Mr. Shapiro summarized his Memorandum to The Washington Zoning Commission, regarding Definition of “Inn”, dated

December 28, 2009 (attached), which he had written in response to Mr. Fitzherbert's 12/8/09 statement. Mr. Shapiro stated that about 70% of uses in the R-1 district are defined in the Town of Washington's Zoning Regulations. He stated that not all definitions are in the formal definition section of the regulations but are defined within the regulations. Mr. Shapiro concluded that the question should not be "Why are 'inns' being singled out for definition" but why is "inn" "undefined and unregulated"? Mr. Fitzherbert stated that he does not have a problem with defining "inn". He stated that the existing regulations do give Z.C. the authority to review the location, type, character, size, proportion, appearance and intensity and that Mr. Averill wanted to include these items in the definition and he did not. Mr. Owen suggested that looking at the Mayflower Inn could be a starting point. Mr. Averill stated that he didn't agree because, in his opinion, the Mayflower Inn is a resort. He stated that he thinks the difference in defining terms such as Bed and Breakfast, Inn, Hotel, Motel, or Resort is size. Mr. Reich stated that there should be a working definition for an "inn" and does not agree that a number could be part of the definition and that it would not be possible to include all that an inn encompasses in the definition of an inn. Mr. Owen stated that there is an obvious difference in understanding as to how "inn" is defined. He stated a definition of "inn" is necessary because it would provide guidelines, which would benefit the Zoning Commission and applicants. Mr. Fitzherbert stated that he found that many definitions of "inn" are unclear because they use the other words, such as hotel, in the definition. He stated that the existing regulations include requirements for health, septic, density & size of the land, town variables and neighborhood variables and he feels this is why a definition of "inn" has not come up until now. He stated that these tools have been used to make decisions that are nondiscriminatory to this date and that defining it by size would affect many other things and could limit inns on large parcels. Mr. Owen stated that he did not feel that it would be discriminatory to set a size limit. Mr. Averill stated that the fact that the word "inn" is in the title of a business doesn't make it an "inn". He suggested a definition for "resort" be added and resorts be permitted in appropriate locations in Town. Mr. Fitzherbert talked about the history of inns in the Town of Washington. He stated that, in his opinion, the Zoning Commission could not determine whether inns on town roads would be good for the Town and its future. Mr. Averill stated he is not opposed to having the hospitality business in the Town of Washington, but that it is necessary to define the terms. Mr. Dubois stated that he did not think the definition of an "inn" should be based on the Mayflower Inn because he feels that it is a "destination resort". He stated that he did not feel that a "destination resort" should be put on a Town Road. Mr. Shapiro noted the Zoning Commission had approved the addition of a spa to the Mayflower Inn in 2003, but he questioned whether the Commission considered the future impacts this would have on both the Town and the definition of "inn". He did not think the existing Mayflower Inn should "hem in" the Commission when it defined "inn", and he reminded the Commission that the definition of "inn" has grown to include uses that would not otherwise be allowed in residential areas. Mr. Owen stated that the Town or State road was not the issue at the moment but an inn in a R-1 District. Mr. Fitzherbert stated that Zoning has approved the Mayflower Inn's various stages of expansion, which has helped them stay in business and stay competitive. Mr. Fitzherbert asked what parts of the existing regulations are not working. Mr. Owen stated that they do work but they could be refined to make it easier and reduce ambiguity for the applicants and Zoning Commission. He suggested the Commission study Mrs. Peacock's research on inns as part of the process of drafting a definition. Mr. Reich stated that the revision of a regulation proceeded without a definition of an "inn" and he feels that the regulation could be revised further without defining "inn". Mr. Shapiro stated that it is important for the Zoning Commission and the applicants to know the parameters of what an inn is. Mr. Abella stated that he agreed with Mr. Owen that the Mayflower encompasses the Town of Washington's meaning of an inn. He believes that quality, size and proportion to the environment is important and that it should be big enough to be economically viable as well as fit in with the Town. Mr. Shapiro stated that the Commission should be mindful when defining "inn" for the Town, that some of these amenities would not be allowed in an R-1 District. There was a brief discussion regarding State Roads and Town Roads. It was the consensus of the Commission that a definition would not be resolved at the moment and that they should continue to work on it.

Election of Officers:

Mr. Owen appointed Mr. Abella and Mr. Reich as the nominating committee and asked that they recommend a commissioner for Secretary. It was the consensus of the Commissioner that Mr. Owen would remain Chairman and Mr. Fitzherbert would remain Vice Chairman.

Privilege of the Floor

Ms. Peacock asked why the Zoning Commission is looking to revise Zoning Regulation Section 13.9 now. Mr. Owen stated that the subject was brought up in October and that there is time to address it now.

Communications

Ms. Hill Submitted the proposed calendar for Zoning Commission Meetings for 2010.

Motion:

to approve the Zoning Commission 2010 Meeting Dates Calendar as submitted,
by Mr. Owen, seconded by Mr. Averill, by 5-0 vote.

Enforcement

Mr. Owen stated that there were no pressing issues on Mr. Ajello's ZEO Report dated 12/28/09 and he asked that the Commissioners look of the report.

Adjournment**Motion:**

to adjourn at 9:50 pm
by Mr. Owen, seconded by Mr. Averill, by 5-0 vote.

Mr. Owen adjourned the meeting.

SUBMITTED SUBJECT TO APPROVAL:

Shelley White, Land Use Clerk
12/31/09

ATTACHMENT #1

Memorandum

TO: Washington Zoning Commission
FROM: Andy Shapiro, Zoning Alternate
RE: Definition of “Inn”
DATE: 28 December 2009

Misconception about defining “inn”: I wish to comment on what seems to be a misconception afoot in the Zoning Commission’s current consideration of whether or not to define an “inn.” The misconception is that in defining an “inn” we would somehow be singling “inns” out for undeserved special attention, which is not accorded to the other uses in the R-1 district. Given that misconception, the very act of defining an “inn” becomes somehow suspect, raising questions about why some commissioners may be motivated to define this particular use but not all of the others permitted in the R-1 district.

The facts are quite to the contrary: Far from singling “inns” out for special attention, defining them would actually be much more in keeping with how our regulations treat most of the other uses in the R-1 district. To leave “inns” undefined would actually single them out for special treatment.

Subcommittee on Defining “Inn”: This whole issue arose at the Dec. 8, 2009, meeting of the subcommittee on defining inns, composed of Commissioners Ralph Averill and Gary Fitzherbert. The minutes of that meeting reflect that Commissioner Fitzherbert rejected Commissioner Averill’s contention that “inn” should be defined: “[Commissioner Fitzherbert] did not think a definition of ‘inn’ was needed because historically, Zoning has always worked well without one. He also noted that few of the uses permitted now under the Regulations are defined and he saw no need to make an exception in this case.”

Commissioner Fitzherbert submitted a seven-page defense of his position, which stated: “My very strong feelings are that isolating out Inn for more specific black and white regulations is the wrong direction to move in, eliminating the historical common sense approach to making the right decisions for the community. The horror would be to do the same for all 44 uses in the R-1 district and then for all the other districts.”

70 % of R-1 ‘uses’ have definitions: The fact is that the clear majority of uses (about 70 percent) in the R-1 district are already defined in our regulations—and with good reason in each instance. It is, therefore, a misconception to regard the potential definition of an “inn” as some sort of a departure from the Zoning Commission’s long-standing regulatory structure.

Not all of these definitions of R-1 uses show up in the formal definition part of our regulations, Section 21. But they are well defined, nonetheless. Take “shop and storage use” as an example. It is a special-permit use in the R-1 (sec. 4.4.11). True, there is no formal definition

of this use in Section 21. But it is elaborately described and controlled in three pages of subsequent regulations (sec. 13.16), far more detailed than any succinct formal definition might have been.

In fact, the easiest way to appreciate which R-1 uses are defined in our regulations is to come at it from the other direction—namely, which uses are not defined—because so few R-1 uses are not defined. The following nine use categories in the R-1 district (out of a total of 31 categories of use) are the only ones not defined in our regulations:

>4.3.4: Swimming pools, ponds [I have deleted “fences” from this list, because it is defined in 21.1.28].

>4.3.5: Public dump, sanitary landfill, and other facilities for the disposal of sewage, garbage, and waste materials only if operated and controlled by the Town of Washington [arguably, this use contains its own definition].

>4.3.7: Patios.

>4.3.8: Unilluminated tennis, basketball, and other sports courts.

>4.4.1: Inn or Tourist home [actually, this use is partially defined in sec. 13.9, which also incorporates extensive details from state statute on motels and overnight cabins].

>4.4.2: Cemetery.

>4.4.3: Commercial horseback riding establishment.

>4.4.9: Buildings, uses, and facilities of the Town of Washington.

>4.4.10: Church, parish house, school, library, museum [I have deleted “registered group day care home” from this list, because it is defined in sec. 21.1.16(c)].

All of the other 22 use categories in the R-1 district are defined uses—that is, defined formally in sec. 21 (“Definitions”) or through specific regulations governing the particular use (as in the case of “shop and storage use”). That includes all of the R-1 uses such as: home office, home enterprise, single-family dwelling, farming, farm stand, registered family day care homes, generators, accessory buildings, accessory apartments, convalescent home, kennel, B & B, room and board, residential conversion of an older home, shop and storage, affordable housing, landmark site, boarding house, general home occupation, cell towers, golf course accessory structures, and outdoor wood-burning furnaces.

So, clearly, the norm is to define most R-1 uses. It is the exception to leave them undefined. The same norm seems to be true of the other residential districts (R-2 and R-3). Definition of uses is the rule, not the exception.

Definition of R-1 Uses Protects Residential Values: The greatest concentration of undefined uses in our Regulations comes not in our residential districts but in our business districts (B-1, B-2, B-3, B-4). So, for example, we have no definition in the Depot Business District for uses like grocery store, drug store, variety store, eating and drinking establishment, antique shop, retail lumber yard, etc.

Perhaps that lack of definition indicates a recognition that definition of uses is less important in the business districts than in the much more sensitive residential ones. For example, there is no definition of business or professional offices in the business districts. But when similar services (e.g., legal, insurance, real estate, accounting, medical, therapeutic, engineering, etc.) are provided out of the home in the residential districts, they are subject to over three pages of regulations (sec. 12.6 on “Home Occupation”). These regulations, not surprisingly, are “designed to maintain the residential character of the lot and the neighborhood, minimize the conflict of the home occupation use with

surrounding residential uses and protect residential property values” (sec. 12.6.1(c)).

That same reasoning that justifies definition and regulation of business uses in a home could apply as well to inns in a residential district. Inns, like “Home Occupations,” represent an undeniable commercial intrusion in an otherwise residential zone. They are permitted, absolutely. But, like home occupations, they ought to be defined in terms of their size, scope and, hence, potential impact on the surrounding residential environment.

Conclusion—Why Define a ‘B & B’ but not an ‘Inn’? At a minimum, the Zoning Commission should not shy away from defining “inn” under the mistaken notion that other uses in the R-1 district are not defined. The question should not be, Why are “inns” being singled out for definition (because they’re not). The burden should shift to those who oppose any such definition: Let them come explain why this particular use (“inn”) deserves to be treated differently than 70 percent of the other uses in the R-1 district. Let them justify giving preferential treatment to the use “inn” and insulating it from the clarity that a definition would bring. Let them explain why it is rational for us to define and regulate a relatively simple use like a B & B in the R-1 district, but then let a much larger and more intrusive commercial use like an “inn” go completely undefined and unregulated.