

February 27, 2006

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

ALTERNATES PRESENT: Mr. Abella, Mr. Wyant

ALTERNATE ABSENT: Mr. Shapiro

STAFF PRESENT: Mr. Ajello, Mrs. Hill

ALSO PRESENT: Mr. Fowlkes, Mr. Boling, Mr. Worcester, Mr. Sears, Mrs. Condon, Ms. Mathews, Atty. Ebersol, Mr. Papsin, Mr. Charles, Mr. Ficalora, Mr. DeVries, Mr. Haber, Mr. McQueen, Mr./Mrs. Boyer, Mr. LaVoie, Mr. Horrigan, Mr. Brigham, Mrs. Federer, Mr. Rosenfeld, Residents, Press

PUBLIC HEARINGS

Myfield, LLC/7 Mygatt Road/10 Dwelling Units/Continuation

Mr. Owen reconvened the public hearing at 7:31 p.m. and seated Members Averill, Fitzherbert, Friedman, Martin, and Owen. He then noted all the documents submitted since the last meeting.

Atty. Ebersol provided an update on outstanding issues raised at the first session of the hearing. 1) The additional perc tests required by the Health Dept. had been done on 2/1/06 and the results were satisfactory. 2) He submitted the 2/23/06 email from Mr. Black to Mr. Charles regarding approval of the Phase 1A for Myfield-Quarry Ridge by the DPUC and the 2/2/06 letter from Ms. Mathieu, Drinking Water Section of the DPH to Ms. Rickard, DPUC, re: issuance of the Well Site Suitability Certification. He then submitted his 2/24/06 letter to the Commission, which addressed the issue of comparability. He said there was nothing in the state statutes that defined comparability and there was only one court case that addressed affordable units with unfinished second floors. He said he had, therefore, consulted Mr. Santoro of the state Dept. of Community and Economic Development who had advised him that 1) in a development of different unit types and sizes, all unit types should include affordable housing, 2. there are no statutes or case law requiring that affordable units be distributed across unit types on a pro rata basis, 3) within unit types all units must be of comparable size and base construction quality, although unit owners are able to upgrade final finishes and amenities and 4) the Myfield plans as amended with one of the condo units as market rate and one of the houses as affordable met the state guidelines for comparability. Atty. Ebersol then stated there was nothing in the statutes that would require that 30% of each type of unit be affordable; only that 30% of the total number of units be affordable.

Mr. Boling, consultant, and Mr. Worcester, architect, presented the "Proposed Site Plan," revised to 2/20/06. The revisions included: 1) deletion of the separate driveway to the condo units, 2) reduction of the size of all the houses to approx. 2600 sq. ft. by leaving a second floor attic instead of making it finished living space, 3) addition of a foot path from the condo units to the open space area, and 4) change of the color of the building housing the condo units to white for visual cohesion. The floor plans, sheet A-2, were reviewed.

Mr. Boling noted the house nearest to Mygatt Road would be the affordable unit since there was a likelihood there would be children living there and this location would be closest to the bus stop. He reviewed the revised list of construction materials, "Specifications and Features of Proposed Units, revised to 2/14/06, noting that although the size of the condo units and houses differed, the construction materials were the same. Mrs. Friedman asked if it was OK that none of the units would be sold with appliances. Mr. Boling said it was and that the owners could install what they want. Mrs. Friedman asked how upgrades would be handled. Mr. Boling said once a unit is purchased, if the owner wants a different amenity, it will be deleted from the purchase price and the owner can then put in whatever he wants himself. Mr. Boling noted all the units would have two garage bays and additional parking areas were noted.

Atty. Ebersol said he disagreed with Atty. Zizka's statement that each type of unit had to include 30% affordable housing and that Mr. Santoro disagreed, also. He pointed out Mr. Shapiro's 11/26/05 memo to Mr. Martin in which Mr. Shapiro stated he had consulted both Mr. Santoro and Atty. Hollister who indicated affordable housing should be present in each type of unit within the development, but was not necessarily required to be evenly distributed among the different type units. Furthermore, Atty. Ebersol argued that the Commission could not require that a larger percentage of the houses be made affordable because this would adversely impact the economic viability of the development and so was not permitted under the Affordable Housing Appeals Act.

It was the consensus of the Commission to get more input from Atty. Zizka on these matters.

Mr. Boyer stated the Washington Community Housing Trust voted unanimously to support this project and to manage the affordable units. Mr. Owen suggested the Commission might require an annual report on affordability from the WCHT, and Mr. Boyer responded this would be possible.

The idea of limited equity and how it could create complications for affordable housing was briefly discussed. Mr. Boyer explained the government formula for resale prices. Mr. Martin noted the affordable formula is an obstacle preventing too much appreciation and Mr. Boyer responded that was what makes the units affordable to people of modest means.

Ms. Thomas asked if the units would be modular. Mr. Worcester said they would.

Mrs. Friedman noted 67% of the condo units were affordable, but only 15% of the houses. She thought this was a dramatic difference and she continued to view it as an issue. Mr. Abella agreed.

Mr. Boling explained that in the proposed development two units had to be affordable for those at 60% of the median income, while one unit had to be affordable for those at 80%. He said the affordable house would be constructed at a great economic loss and so having to make more than one of the houses affordable would not be economically viable.

After a brief discussion the applicant consented to a continuation of the public hearing to the March 27th meeting so that he would have the opportunity to respond to any additional input from Atty. Zizka.

MOTION: To continue the public hearing to consider the application submitted by Myfield, LLC. for ten dwelling units at 7 Mygatt Rd. to 7:30 p.m. on Monday, March 27, 2006 in the Land Use Meeting Room, Bryan Memorial Town Hall, Washington Depot, Ct. By Mrs.

Friedman, seconded by Mr. Fitzherbert, and passed 5-0.

At 8:12 p.m. Mr. Owen continued the public hearing to March 27, 2006 at 7:30 p.m. in the Land Use Meeting Room, Bryan Memorial Town Hall.

Allen/158 Popple Swamp Road/Special Permit: Section 13.11/Detached Accessory Apartment

Mr. Owen called the hearing to order at 8:13 p.m. and seated Members Averill, Fitzherbert, Friedman, Martin, and Owen. Mrs. Friedman read the legal notice published in **Voices** on 2/15 and 2/22/06. Mr. Owen noted for the record the documents in the file and read the 2/27/06 WEO Report.

Mr. Horrigan, contractor, presented the site plan, "Subsurface Sewage Disposal System," by Mr. Neff, dated 12/23/05. He noted the proposed house was 5500 sq. ft. not including the indoor pool and the proposed apartment was 900 sq. ft. The floor plans and elevations were reviewed. Mr. Horrigan noted the plans showed the accessory building in which the apartment would be located would be 28 feet tall, two feet more than the maximum height permitted. He said this could be lowered 2.5 to 3 feet to comply with the Regulations. Mr. Martin asked Mr. Horrigan to make a hand written note on the plans to state the height of the accessory building would not exceed 26 feet and he agreed to do so.

Mr. Ajello stated there were no issues with the driveway and that the owners had signed a statement they would reside on the premises for the duration of the permit.

There were no questions or comments from the public.

MOTION: To close the public hearing to consider the Special Permit application: Section 13.11 submitted by Mr. and Mrs. Allen to construct a detached accessory apartment at 158 Popple Swamp Road. By Mr. Martin, seconded by Mrs. Friedman, and passed 5-0.

Mr. Owen closed the public hearing at 8:20 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. Owen called the Regular Meeting to order at 8:22 p.m. and seated Members Averill, Fitzherbert, Friedman, Martin, and Owen.

Consideration of the Minutes

MOTION: To accept the 1/23/06 Public Hearing - Regular Meeting minutes as written. By Mrs. Friedman, seconded by Mr. Martin, and passed 5-0.

Pending Applications

Myfield, LLC./7 Mygatt Road/10 Dwelling Units: The public hearing was continued to Monday, March 27, 2006 at 7:30 p.m.

Allen/158 Popple Swamp Road/Special Permit: Section 13.11/Detached Accessory Apartment: It was noted that as long as the plans had been corrected to show the accessory building would not exceed 26 ft. in height, the application complied with the Zoning Regulations.

MOTION: To approve the application for a Special Permit: Section 13.11 submitted by Mr. and Mrs. Allen to construct a detached accessory apartment at 158 Popple Swamp Road subject to the condition that the plans be revised to reflect a maximum height for the accessory building of 26 feet measured from the pre existing grade. By Mrs. Friedman, seconded by Mr. Fitzherbert, and passed 5-0.

New Applications

Ingrassia/135 East Shore Road/Special Permit: Section 6.4.6/Fence on the Lake Waramaug Side of East Shore Road: No one was present to represent the applicant. A public hearing was scheduled for Monday, March 27, 2006 immediately following the Myfield, LLC. hearing.

Greenfield/12 Ives Road/Special Permit: Section 13.11/Detached Accessory Apartment: A public hearing was scheduled for Monday, March 27, 2006 immediately following the Ingrassia hearing.

Leach/10 Main Street/Convert Barn to Produce Store:

Leach/10 Main Street/Special Permit: Section 13.13/Housing in the Business Districts: Mr. LaVoie, contractor, and Mr. Rosenfeld, owner, presented a photo board to illustrate the structures existing on the property and the type of renovation work proposed. It was noted a produce store was a use permitted by regular zoning permit in this district, but the applicant wanted the Commission to see the plans for the site and to consider how amendments to the business district regulations might affect development there. Mr. Rosenfeld stated the property is zoned for business, but is currently used as a single family residence. He noted the largest problem with converting the barn to commercial use is accommodating the required parking spaces and providing adequate space for maneuvering vehicles. The applicant said he had applied for a variance to move the existing structure back 10 feet and to construct a retaining wall to provide more room for parking at the street elevation. Mr. LaVoie proposed four spaces at street level and eight on the upper level. A second pending variance request is to increase the height of this non conforming building. It was noted the second application submitted was to convert the existing dwelling to a business use on the first floor with an apartment on the second floor. Mrs. Friedman asked if there would be any connection between the two operations and Mr. Rosenfeld said they would be independent. Mrs. Friedman asked if the produce store would be a seasonal use. Mr. Rosenfeld said it would operate nine months of the year and would support local farmers. Mr. Martin noted some of the activities proposed were on the Town right of way and so advised the applicant that written permission from the Board of Selectmen would be required. A public hearing to consider the Special Permit for Housing in the Business District was scheduled for Monday, March 27, 2006 immediately following the Greenfield hearing.

Ensign/199 Tinker Hill Road/Special Permit: Section 13.11/Detached Accessory Apartment: A public hearing was scheduled for Monday, March 27, 2006 immediately following the Leach hearing.

Other Business

Certificate of Zoning Approval for Gas Station/7 Titus Road: Mr. Averill recused himself and Mr. Wyant was seated. Mr. Campbell briefly explained his plans to purchase the Titus Park Garage. He said he had no plans to change its operation. Mr. Sears asked if the fuel tanks would have to be changed. Mr. Campbell said per the DEP the tanks were good for another nine years. Mrs. Hill noted gas stations are a permitted use in the Depot Business District and although it would be very difficult to find the original permit, the current station had been operating for much longer than three years with no complaints on file. She had consulted with Atty. Zizka who had advised her that a public hearing was not required, but the Commission must act on the Certificate of Zoning Approval, not the ZEO. It was the consensus the gas station at 7 Titus Road qualified for the certificate.

MOTION: To authorize the Chairman to sign the Certification of Zoning approval and map as required by the State for the purchase of the gasoline station, Titus Park Garage, at 7 Titus Road by Mr. Campbell. By Mr. Owen, seconded by Mrs. Friedman, and passed 5-0.

Mr. Owen signed the paperwork and map.

Mr. Averill was reseated.

Ficalora/1 Green Hill Road/Preliminary Discussion: Mr. Ficalora told the Commission he had followed its guidance from the last meeting. Mr. DeVries, architect, presented a site development plan and an overall site plan of the Depot center to show how the proposed development would fit in with the surrounding area. He stressed that the design was not arbitrary, but had been carefully drafted to fit in appropriately with the existing character of the Depot. The plans included a two story, L shaped building, which faced both Green Hill Road and Bryan Plaza, moved up close to the front property line. Parking was to the rear and on the River Road side. He pointed out that this structure would reinforce the corner, there were areas for plantings between the building and the property lines, and there were walkways to connect the building and the on site parking to Bryan Plaza where some of the municipal parking spaces would be shared. The architectural plans showed the two story structure would not overwhelm the parcel because although it would be two full stories in the center, it would have a wing on either side where the second story would be set into the roof line. He circulated photos of various buildings elsewhere in the Depot to show similarities in design and architectural features. Floor plans were reviewed. These indicated the possibility of two primary spaces for either retail or business on the first floor and three smaller spaces on the second floor. There would also be a partial basement area that could be a service area for the businesses above. Residential units were not considered for the second floor as they would require more expensive construction and the egress requirements would affect the exterior aesthetics. Mr. DeVries asked the Commission if the plans reflected the priorities discussed at the last meeting and the response was a resounding yes. Mr. McQueen, architect, researched the issue of parking to help the Commission with its eventual deliberations regarding the amount of on site parking that should be required under revised regulations. He reported the parking requirements in other towns such as Bethel, New Milford, Litchfield, and Kent differ from Washington because 1) they permit off site parking, 2) the number of spaces required is ultimately left to the discretion of the Commission, 3) they allow for shared parking to take advantage of off peak business periods, and 4) they require smaller parking spaces. He noted Bryan Plaza currently provides parking at the rate of one space for every 545 sq. ft., far below what is required under the Regs. The site plan under discussion called for 15 on site spaces, which was 1 per 367 sq. ft. Mr. McQueen thought this would be adequate due to the physical connection with Bryan Plaza where additional spaces would be available. He noted if the Plaza spaces were repainted 9 ft. wide as is done in other towns, instead of the current 10 ft. wide, the available parking would be increased by 4 spaces. Several voices in the audience did not

support this idea. Mr. Owen thought shared parking would increase the likelihood of walking around the Depot. There was a brief discussion comparing the plan discussed at the last meeting with the current plan. The commissioners thanked Mr. Ficalora, Mr. DeVries, and Mr. McQueen for their efforts to be as responsive as possible to the concerns the Commission raised at the last meeting.

Revision of the Zoning Regulations/Section 13.12/Modification of Certain Requirements in Business Districts: Mr. Owen explained the basic idea behind the proposed revisions is that the Washington Depot and New Preston Business Districts can not be rebuilt as they are today under the current Zoning Regulations, which legislate sprawl rather than the compact, more rural, village type centers the Town values. He noted the current zoning regulations are a blueprint for the type of development found along Rt. 7. Therefore, he said he had discussed the proposed revisions with Mr. McGuinness, Director of the NW Ct. Council of Governments, and with Mrs. Hill. The result was a proposal to allow the waiver by Special Permit of the requirements for coverage, setbacks, lot size, parking, landscaping, and increases in nonconforming structures as a temporary solution to the problem. More detailed, specific regulations would need to be drafted in the near future, he said. He said he was still waiting for input from Atty. Zizka. Mr. Martin said he favored the concept to enable property owners such as Mr. Ficalora to develop their properties in a more traditional manner, but said he would be more comfortable if the temporary regs had a time limit. It was generally thought 18 months would be required to do a thorough job. Mr. Martin thought the proposed Special Permit process was needed most for the Depot and New Preston and was not so pressing for Woodville or Marbledale, where the regs had been recently updated to permit more innovative development. Mr. Martin and Mr. Abella pointed out that due to its location, Marbledale would be most susceptible to pressures from New Milford and urged the Commission to be cautious about changes to that district's regs. Mrs. Friedman agreed, adding that Marbledale differed from the Depot and New Preston Business Districts because it had no center.

MOTION: To schedule a public hearing at 7:30 p.m. on Monday, April 24, 2006 in the Land Use Meeting Room, Bryan Memorial Town Hall, Washington Depot, Ct. to consider revisions to the Washington Zoning Regulations: addition of Section 13.12 regarding the modification of certain requirements in the Depot and New Preston Business Districts. If approved, these revisions will be effective for 18 months to provide the Commission time to draft and enact permanent regulations for these two business districts. By Mr. Owen, seconded by Mrs. Friedman, and passed 5-0.

Mr. Martin noted final language should be ready for the March meeting if a hearing is to be held in April.

Request by ZBA to Amend Section 12.14.5: The proposal by the ZBA (indicated in italics) that in order to obtain a Special Exception under this section, the applicant must demonstrate the placement of the noise generating equipment would have *the same or* less noise impact on neighboring properties was discussed. It was noted that similar language had been considered previously and it had been decided to adopt the stricter standards. It was the consensus that applicants should have to demonstrate that there would be a clear advantage of installing noise generating equipment in a location that does not comply with the requirements of Section 12.14. The commissioners thanked the Zoning Board of Appeals for its continued efforts to enforce the Regulations according to the strict established standards.

Privilege of the Floor

Mr. Ficalora asked when he would be able to submit an application for 1 Green Hill Road as presented in the preliminary discussion held earlier in the evening. He was advised that he must wait until revisions to the Regs are effective and that the best case scenario would be May.

Communications

Copies of the 2/2/06 and 2/13/06 letters from Mr. and Mrs. Gorrivan and Mr. and Mrs. Mitchell to the Commission were circulated. These South Street residents asked that a moratorium be placed on Special Permit applications in the R-1 District until the Zoning Commission considered what uses were appropriate for that district and amended its Regulations accordingly. The commissioners generally thought that Zoning has sufficient standards already in place to protect residential properties. It was also thought the request might be prompted by a desire to stop the development of schools in the R-1 District. It was noted that the deletion of schools as a use permitted by Special Permit would result in all of the existing schools in Town becoming non conforming and that this could mean difficulties for the construction required for whichever option, three primary schools or one consolidated school, approved in the March 7 referendum. The Gorrivans and Mitchells will be sent a copy of the minutes with a note thanking them for their input. It was noted they could formally petition for a revision of the Regulations if they want to pursue this matter further.

Mr. Owen noted several meetings ago Mrs. Andersen had complained the Town was not doing all it could to count faculty housing units as affordable housing to meet the Town's 2% goal; the threshold for a moratorium under the Affordable Housing Appeals Act. He said he had discussed this matter with Mr. Graham of The Gunnery, but had learned The Gunnery did not want to stigmatize its faculty housing by calling it affordable. Mrs. Friedman said she had discussed this issue with Mr. Holiman, who also said he had brought up this idea with the private schools and was getting resistance. Mr. Owen noted some of the schools have coverage problems and thought possibly the Commission could allow greater coverage on those campuses with official affordable housing units.

Enforcement

Mr. Ajello said he was making good progress with getting the property owner to clean up the junk on Dark Entry Road and with correcting the sign violation at the 202 Marketplace. He recommended that signs at gas stations be discussed in the future.

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

Mr. Owen adjourned the meeting at 9:45 p.m.

FILED SUBJECT TO APPROVAL

Respectfully submitted,

Janet M. Hill, Land Use Coordinator