

March 22, 2010

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

Alternates Present: Harry Wyant, Andy Shapiro

Absent: Lou Abella, A.J. Dubois, Alt.,

Staff Present: Janet Hill, Shelley White

Others Present: Dirk Sabin, Landscape Architect, Mr. Bedini, Mr. Williams, Mr. Parker, Mr. Klauer, Ms. Federer, Mr. Dutton, Residents

Mr. Owen called the meeting to order at 7:30 pm.

PUBLIC HEARINGS

Seated: Mr. Owen, Mr. Reich, Mr. Averill, Mr. Fitzherbert, Mr. Shapiro Alt. (for Abella)

Revision of the Zoning Regulations/Section 2.3.2.g, 12.6.1.10, 15.2 and 21.1.24/Add Definition of Eating and Drinking Establishment, Change “Restaurant” to “Eating and Drinking Establishment” throughout, Add as prohibited use establishments that serve food or drink to customers in vehicles:

Ms. Hill read the legal notice published in Voices on March 10 and March 17, 2010.

Mr. Owen read the list of documents on file for this application. Mr. Owen stated that Dan McGuinness, of the Northwest Council of Governments, stated that this revision does not conflict with any plan or policy of the Northwest Council. Mr. Owen read the motion from the Planning Commission Meeting of 2/2/10 which stated that it had no objections to this revision. Mr. Owen read the approved language and briefly discussed that these revisions were made to make the regulations more consistent throughout. Mr. Parker asked about the connection of rural character to the approval of these revisions. Mr. Owen explained that the Planning Commission must consider, when approving these revisions, that they are consistent with the Town Plan of Conservation and Development and rural character, which is a component of the POCD.

Motion:

to close the Public Hearing for the Revision of the Zoning Regulations/Sections 2.3.2.g, 12.6.1.10, 15.2, and 21.1.24/add Definition of Eating and Drinking Establishment, Change “Restaurant” to “Eating and Drinking Establishment” throughout, Add as prohibited use establishments that serve food or drink to customers in vehicles,
by Mr. Shapiro, seconded by Mr. Reich, by 5-0 vote.

Sekikawa (Read)/4 Green Hill Road/Special Permit: Section 8.4.19/Eating and Drinking Establishment:

Ms. Hill read the legal notice published in Voices on March 10 and March 17, 2010.

Mr. Owen read the list of documents on file for this application. Mr. Owen read a letter from the applicant stating that they will comply with the Town of Washington's Zoning Regulations regarding signs, the current signs will be used and only the lettering will be changed. Ms. Hill stated that the application is complete and she recommended that the Commission recommend to Ms. Sekikawa that all employees park at 16 Titus or behind Town Hall because of the limited parking for all the businesses in the immediate area. Ms. Sekikawa was present and stated that she was aware of the parking situation. There were no questions or comments from the public or the Commission.

Motion:

to close the Public Hearing for Sekikawa (Read)/4 Green Hill Road, Washington Depot, CT/Special Permit: Section 8.4.19/Eating and Drinking Establishment,
by Mr. Averill, seconded by Mr. Shapiro, by 5-0 vote.

Mr. Wyant recused himself.

Williams/88 Bee Brook Road/Special Permit: Section 8.4.19/Eating and Drinking Establishment:

Ms. Hill read the legal notice published in Voices on March 10 and March 17, 2010.

Mr. Owen read the list of documents on file for this application. Ms. Hill reviewed her administrative report, dated 3/22/10, with the Commission. Mr. Williams was present and submitted a note stating that he would correct the sign lighting immediately and will comply with the lighting regulations. Mr. Owen explained how the lighting could be fixed in order to comply with the Zoning Regulations. There were no questions or comments from the public or the Commission.

Motion:

to close the Public Hearing for Williams (Wyant & Co.)/88 Bee Brook Road/Special Permit: Section 8.4.19/Eating and Drinking Establishment,
by Mr. Shapiro, seconded by Mr. Reich, by 5-0 vote.

Mr. Wyant returns.

REGULAR MEETING

Mr. Owen called the regular meeting to order at 7:57 p.m.

Consideration of the Minutes

The February 22, 2010 Zoning Commission Regular Meeting Minutes were considered:

Corrections:

Page 4: Paragraph beginning Mr. Owen suggested...4th sentence should read: Mr. Owen suggested that in section 15.2 Number of Parking Spaces, eliminating “boarding house, rooming house, or tourist house”

7th sentence should read: He stated that another possibility to consider would be something similar to the residential conversion...

8th sentence should read: He stated that inns should be allowed in the Lake Waramaug District and that they continue to not be allowed in the Marbledale and Woodville Business Districts.

Page 5: 2nd Paragraph, delete 3rd sentence beginning with Mr. Owen stated that the Town...

Motion:

to accept the Zoning Meeting Minutes of February 22, 2010, as amended,
by Mr. Owen, seconded by Mr. Reich, by 5-0 vote.

Pending Application(s)

Sekikawa/4 Green Hill Road/Special Permit: Section 8.4.19/Eating and Drinking Establishment:

There was a brief discussion regarding employee parking and signage.

Motion:

to approve Special Permit Application submitted by Sekikawa/4 Green Hill Road/Section 8.4.19/Eating and Drinking Establishment, with the recommendation that employees park at the Old Town Garage Site or behind the Town Hall,
by Mr. Owen, seconded by Mr. Reich, by 5-0 vote.

Williams/88 Bee Brook Road/Special Permit: Section 8.4.19/Eating and Drinking Establishment:

There was a discussion regarding section 16.3.4 in the Zoning Regulations.

Motion:

to approve Special Permit Application submitted by Williams/88 Bee Brook Road/Section 8.4.19/Eating and Drinking Establishment, with the requirement that lighting of the signs be brought into compliance with Section 16.3.4,
by Mr. Owen, seconded by Mr. Reich, by 5-0 vote

Swanson/Forese/41 Horse Heaven Road/First Cut – Pending ZBA Variance:

Ms. Hill distributed copies of her correspondence, regarding this application, with Attorney Mike Zizka.

New Application(s)Schoellkopf/300 Nettleton Hollow Road/ Special Permit: Section 13.17/Public Restrooms:

Mr. Dirk Sabin, Landscape Architect, was present to represent Mr. Schoellkopf. He stated that Mr. Schoellkopf has received a variance from the Z.B.A.

Motion:

to schedule a Public Hearing on April 26, 2010 to consider the application for Schoellkopf/300 Nettleton Hollow Road/ Special Permit: Section 13.17/Public Restrooms,
by Mr. Owen, seconded by Mr. Averill, by 5-0 vote.

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

The Zoning Board of Appeals has not submitted a response as of the time of this meeting.

Revision of The Zoning Regulations/Sections 2.3.2.g, 12.6.1.10, 15.2, 21.1.24/ Re: Eating and Drinking Establishments:

There were no further comments from the public or the Commission.

Motion:

to approve the Revision of the Zoning Regulations/Sections 2.3.2.g, 12.6.1.10, 15.2, and 21.1.24/add Definition of Eating and Drinking Establishment, Change "Restaurant" to "Eating and Drinking Establishment" throughout, Add as prohibited use establishments that serve food or drink to customers in vehicles,
by Mr. Shapiro, seconded by Mr. Reich, by 5-0 vote.

Revision of Zoning Regulations/Proposed Section 13.21/Eating and Drinking Establishments/Transfer of Special Permit for Eating and Drinking Establishments under Specific Circumstances:

Ms. Hill distributed a copy of the proposed language for Section 13.21 Eating and Drinking Establishments. The Commission discussed whether or not the Zoning Enforcement Officer could handle this transfer in the Land Use Office. Ms. Hill stated that she would check with Town Counsel as to whether or not staff would be able to approve Special Permits and if the Regulations need to have language that includes Zoning Permits being changed into Special Permits. A Public Hearing has been scheduled for the next Zoning Meeting on April 26, 2010.

Motion:

to continue Discussion of Possible Revision of the Zoning Regulations/Proposed Section 13.21/Eating and Drinking Establishments/Transfer of Special Permit for Eating and Drinking Establishments under Specific Circumstances, and to have Ms. Hill discuss procedures with Town

Counsel,
by Mr. Averill, seconded by Mr. Fitzherbert, by 5-0 vote.

Possible Revision of the Zoning Regulations/Section 13.9/To Allow Inns on Town Roads – Definition of “Inn”:

Mr. Owen read Attorney Mike Zizka’s email response, dated 3/22/10, to Ms. Hill’s memo titled Inns Comments/Suggestions/Recommendations after 2/22/10 Meeting and Mr. Owen’s document titled Inns – Draft, dated March 22, 2010. Atty. Zizka stated in his email that most of the issues are philosophical or policy related, that he had concerns that the definitions are ambiguous and that the Commission could not legally require a preliminary meeting and if they did this for inns, then why not do it for other uses. Mr. Owen stated that in his Inn-Draft concepts, dated 3/22/10, section 21.1.36 Inn, the phrase “small country hotel’ could be replaced with the word “facility”. He suggested changing “small gift shop intended primarily for guests” to “a single retail shop primarily for guests.” The Commission suggested “a gift shop” would be fine as the square footage is already limited. Mr. Owen stated that “low intensity,” “spa,” and “health club” should be defined. Mr. Averill stated that he did not see how a health club fits in with the definition of a lodging facility. The Commission discussed what they felt was low intensity recreation. Mr. Fitzherbert stated that he was concerned about being too specific with defining “health club.” Mr. Owen stated that the definition could be vague enough to allow flexibility or the definition could be revised in the future. He stated that an example of “health club” could be “an establishment that provides facilities for indoor exercise.” Mr. Shapiro stated that he was more concerned with who the health club would be opened to. Mr. Owen stated that it would be difficult to enforce and for the owner to comply with a regulation that limits or does not allow people other than guest not to use the facility. He stated that the use could be controlled by limiting the size/capacity. Mr. Owen stated that if an inn is considered a use in the R-1 district then amenities that an inn requires should be allowed and included in the definition. Mr. Shapiro stated that allowing restaurants and gyms in the R-1 district ‘under the rubric of an inn’ could lead to problems.

Ms. Hill stated she had two concerns. The first is that she feels a preliminary discussion for this proposed use is important because this is a truly commercial use in a residential district and that it ‘merits that extra layer of review.’ Ms. Hill also stated that parking could impact the character of residential neighborhoods, but is not addressed in the draft of the inn regulations.

Mr. Fitzherbert stated that it is his opinion that the question is whether the Town wants a business in the R-1 district. He stated that these businesses need to be economically viable and the Town needs to decide if they are going to be ‘business friendly or if we, in fact, are going to be anti-business.’ He stated that he studied the numbers in the proposed language for the inn regulations and that none of the numbers work. He stated that he was concerned that the Zoning Commission’s decisions regarding this proposed language would impact the economic viability of existing and future businesses. Mr. Fitzherbert stated that it is his opinion that the Zoning Commission needs to consider the bigger picture. Mr. Shapiro stated that he did not feel this should determine the framework of the Zoning Regulations. Mr. Owen stated that the Zoning Commission has the responsibility to protect the rural character of the Town and that it is important that the Zoning Regulations reflect this rural character. Mr. Fitzherbert stated that he did not agree with placing a limit of one guest bedroom per acre. Mr. Owen stated this is placing a maximum amount not a minimum and the size can be limited through the Special Permit regulations. Mr. Owen stated they are making the decision based on Town character ‘whether the economics within those parameters make sense to somebody, it’s up to them.’ Mr. Fitzherbert stated that these numbers are making business economically impossible. Mr. Owen stated that the Town of Washington, through the Zoning Regulations, has limited the size of our commercial districts and limited the scale of what the businesses are allowed to

do in those districts. Mr. Owen stated that the Regulations deal with scale and impact not economics. Mr. Fitzherbert stated that he did not see a reason to change the Regulations because they have always worked in the past. Mr. Shapiro stated it is important because Zoning is considering allowing inns on any road in Town and before this is done the word “inn” should be defined. Mr. Owen stated that the purpose of this process is to make it clearer for the Commission and the applicants going forward. Mr. Fitzherbert stated that the numbers in the proposed language are random and do not make sense. Mr. Owen stated that the numbers are an attempt to envision a scale of operation that we feel would be acceptable in the Town.” Mr. Shapiro stated that he was not sure that the Zoning Commission has the authority to consider economic viability for an application. Mr. Fitzherbert stated that in a discussion, before the Zoning Commission makes a decision regarding changing the Regulations, economic viability could be discussed. Mr. Fitzherbert stated that he would like this discussion to go to a Public Hearing. He stated that the Special Permit Process is very efficient, “we have the worlds best criteria and it has never not worked.” Ms. Hill stated that the majority of the Commissioners thought that inns were only allowed on State roads and now the regulations are possibly being revised to say they are allowed on Town roads and people are concerned about what is being allowed in more areas of Town. She suggested that there be a public informational meeting because specific draft language was not ready. Mr. Owen stated that he agreed with Ms. Hill that a public informational meeting would be a good idea if the Commission could not agree on a proposal. Mr. Reich stated that his main concern is that if someone were to come to the Zoning Commission with a proposal of something that is not defined in the Zoning Regulations, would the Zoning Commission have to spend four months defining this use. He stated that he feels that the Zoning Commission will most likely miss something when defining these terms and that they are not qualified to apply numbers to these definitions. Mr. Shapiro stated that the numbers that have been applied are the Zoning Commissions efforts to set limits of impact on things as they understand them under the Town’s Plan of Conservation and Development. He stated that the Zoning Commission is trying to limit the impact of the use of land in Town. Mr. Reich stated that he felt defining “inn” has become a ‘road block’ for the Town of Washington Zoning Commission. Mr. Owen stated that the regulation was changed in order to clarify what the Commission had always thought it to be, which was to allow inns only on State roads. He stated that this has been an opportunity to clarify the regulations. There was a brief discussion regarding the history of revising this regulation. Mr. Owen stated that they could just keep the regulations the way they are. Mr. Fitzherbert stated that that would be fine but he would make a motion to include inns on Town roads.

Mr. Averill stated that he agreed with most of Mr. Owen’s and Mr. Shapiro’s concepts except for Mr. Owen’s revisions to Section 4.4.1.d. Mr. Averill stated that, in his opinion, this section is allowing an inn and a restaurant in the R-1 district. He stated that he would like to see the seating capacity to be no more than the overnight lodging capacity of the inn. He stated that he agrees with Mr. Shapiro that, in the R-1 District, the primary purpose of an inn is lodging. Mr. Owen stated that ‘d’ could be eliminated and dealt with through the Special Permit process. Mr. Averill suggested eliminating the section 4.4.1.e (addressing the capacity of the spa, fitness facility, etc.) under the same principle. Mr. Owen stated that the rationale for ‘d’ is to prevent someone from applying for an inn that has 1 token room in order to open a restaurant in the R-1 District. He stated that this was his similar rationale for 4.4.1.e. Mr. Shapiro suggested that in the definition of “inn” that he would prefer to list the accessory services that are allowed rather than saying ‘such as’. There was a brief discussion regarding what is meant by low intensity recreation. The Commission agreed that this term needs to be defined. Mr. Owen stated that he could see listing activities that are appropriate for the property and the neighborhood. There was a brief discussion regarding noise.

Mr. Shapiro read his proposed definition of “Inn” dated 3/22/10. Mr. Owen stated that he would be fine with Mr. Shapiro’s definition of an “Inn” if ‘(and, in the case of a spa, fitness facility, and low-intensity recreation, exclusively)’ were omitted and that the terms stated previously are defined. The Commission suggested that “health club” could encompass “spa” and “fitness facility”. Mr. Averill suggested

that low-intensity outdoor recreation be included. Mr. Owen suggested that they could use low-intensity recreation in the definition of an “inn” and then define low-intensity recreation and put appropriate limits on the size in each district.

Mr. Owen explained the reason for using square footage limits on gift shops and meeting rooms is that it would be easy to enforce at the application level. There was a discussion regarding capacity and how it relates to the square footage of a space. Mr. Owen stated that these limitations would avoid inns in the R-1 district from having frequent large gatherings that would impact the neighborhood with traffic, parking and noise.

Mr. Shapiro suggested adding language to Section 13 that states ‘it can be demonstrated that the location and appearance of structures on the lot as well as their use and operation as an inn shall not adversely alter the primary residential character of the lot and the neighborhood.’ He also briefly discussed the possibility of requiring a management plan that would show the inn would operate so it would not have adverse effects on the neighborhood.

Mr. Owen stated that he did not feel that a Public Hearing should be scheduled for this revision at this time. He stated that he would incorporate all that has been discussed at this meeting and distribute the amendments among the Commissioners, Ms. Hill and Atty. Zizka. He stated that it might be possible to schedule a Public Hearing at the next Zoning Commission Meeting.

Mr. Owen stated that he gave the keynote address at a conference in Hartford about smart growth and urban planning in Hartford. He stated that one of the seminars was conducted by a law school professor from Robinson and Cole, which had a class that created a model zoning ordinance. He stated that he had a copy of this and was going to try to make it accessible through the Town Website. He urged the Commissioners to review it.

Privilege of the Floor

Mr. Dutton reminded the Commission that the hospitality and education industries have been an important part of the Town of Washington’s history. He stated that the Town has had to grow and change with these businesses. He stated that he appreciates Mr. Fitzherbert’s argument that the Zoning Commission needs to consider the economic impact of the Zoning Regulations. He stated that putting a limit of 30 rooms may be suitable for one location but not for all locations. He stated that he thinks the maximum amount of rooms should be dealt with through the Special Permit process. Mr. Dutton stated that he thinks the positive impact of an economically viable business should be considered. He stated that he thinks disallowing inns on Town roads is ‘blatantly unfair and discriminatory against property owners on Town roads that might want to do some sort of small, medium or large inn.’ He stated that he would like to know what the process is for allowing the townspeople to decide whether inns should be allowed on Town roads. Mr. Owen stated that there is none; this is under the authority of the Zoning Commission. A person could petition the Zoning Commission to amend its Regulations.

Mr. Parker asked the Commission to explain the process of changing a Zoning Regulation. Mr. Owen stated that there needs to be a proposal, the proposal goes to a Public Hearing if there are only minor changes, if it requires more than minor changes the proposal needs to be worked on and resubmitted, then it is submitted to the Planning Commission. When the Zoning Commission agrees on draft language, Planning has to consider it and vote on whether it is consistent with the Town Plan, then it goes to the Northwest Council of Governments

and three other councils and they need to submit comments. Mr. Parker stated that using the Mayflower Inn, which is on a State road, as the standard for an inn does not seem fair to allow something of that scale on a Town road. Mr. Parker asked Mr. Owen how many new applications have been received by the Zoning Commission for inns during his tenure.

Communications

Mr. Owen stated that a letter from Peter Talbot regarding the Meeting with the Board of Selectman on March 25 at 5:30 pm regarding 16 Titus Road has been received.

Enforcement

No enforcement issues were discussed

Adjournment

Motion:

to adjourn at 10:50 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