

March 23, 2009

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

Alternates Present: Harry Wyant, A.J. DuBois

Absent: Valerie Friedman Andy Shapiro,

Staff Present: Janet Hill, Shelley White

Others Present: Matt Klauer, Paul Szymanski, Engineer, Atty. Robert Fisher, Brian Neff, Engineer, Darryl Wright, Donna Wright, John Harris, Mike Gorra, Regine Laverge, Tom McGowan, Bob Papson, Dennis McMorro, Engineer, Atty. James Steck, Residents

Mr. Owen called the meeting to order at 7:34 pm.

PUBLIC HEARINGS

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

Revision of the Zoning Regulations/Section 9.2.3/Add Offices to Permitted Uses Under Specific Circumstances in the Marbledale Business District:

Ms. Hill read the legal notice published in Voices on 3/11/09 & 3/18/09. Mr. Owen read the list of documents on file for this and the two following Public Hearings addressing revisions to the Zoning Regulations. Ms. Hill stated that there are other uses that are already permitted, such as small-scale retail businesses and art galleries, as long as there were not any exterior changes and offices are a logical permitted use to add to this regulation. She reported that the Planning Commission does not have any objections to this revision.

Motion: to close the Public Hearing to consider the revision of the Zoning Regulations/Section 9.2.3/Add Offices to Permitted Uses under Specific Circumstances in the Marbledale Business District, by Mr. Fitzherbert, seconded by Mr. Abella, by 5-0 vote.

Revision of the Zoning Regulations/Section 12.14.5/Deletion of Special Exception Provisions for Generators, Air Conditioners, Pool Filters, and Other Noise Generating Equipment:

Ms. Hill read the legal notice published in Voices on 3/11/09-3/18/09. Mr. Owen stated the Planning Commission has communicated that they have no objection to this revision. Mr. Owen asked Mr. Wright if he would like to comment. Mr. Wright suggested the decision could be postponed and he could provide input to the process of re-wording the regulation so that it allows people who can afford a generator and have the acreage to locate a generator more than 25 ft. from the principal structure served and in the least obtrusive area for themselves and their neighbors. Mr. Owen stated the regulations are meant to put the responsibility on the homeowner to find the quietest solution in locating the equipment because it would be closer to them than their neighbors. He stated Zoning Commission has consulted with experts such as acoustical engineers to determine if there are things that can be done to muffle the noise of these types of equipment. He was told it

would depend on the specific application because noise is affected by so many different variables. Mr. Wright stated he would like the commission to consider how many complaints have been received in the last 15 years and not to make a regulation that is too restrictive. Mr. Szymanski stated the special exception gave a little more leeway in placing a piece of equipment. His firm is currently trying to site a generator for a client that would be at least 1,000 feet away from any neighbor. He stated he was concerned that, by state statutes, his client would not be able to prove hardship. Mr. Owen stated the homeowner would have the responsibility of installing the equipment within the regulations and they will be more likely to going to make an effort to muffle the noise as much as possible. Mr. Szymanski asked if the Zoning Commission has looked at other towns' regulations regarding placement of noise generating equipment. Mr. Owen stated they had not. Mr. Averill stated there have been many advances on quieting generators. Mr. Wright stated the majority of generators in this area are used for emergencies. Mr. Owen suggested that maybe emergency generators could be separated from the rest of the noise generating equipment included in this regulation. Mr. Owen stated there are two options: 1) to vote on this revision tonight and possibly revisit it later, and 2) to postpone acting on the proposed revision in order to discuss it further. The members of the commission felt comfortable proceeding with the revision and agreed to include generators when they consider the regulations for windmills.

Motion: to close the Public Hearing to consider the revision of the Zoning Regulations/Section 12.14.5/Deletion of Special Exception Provisions for Generators, Air Conditioners, Pool Filters, and Other Noise Generating Equipment, by Mr. Owen, seconded by Mr. Fitzherbert, by 5-0 vote.

Revision of the Zoning Regulation/16.4.1/ To allow Certain Business and Institutional Signs in the Residential Districts:

Ms. Hill read the legal notice published in Voices on 3/11/09-3/18/09. Mr. Owen stated the Administrative Report, dated 1/26/09, and the notes from the 1/26/09 Zoning Meeting, by Ms. Hill, are in the file in addition to the previous items stated. Mr. Owen read the 3/20/09 report from the Planning Commission (on file in Land Use Office) suggesting that further consideration be given to this revision. The Planning Commission suggested a 2 sq. ft. size limitation, lighting be prohibited or strictly limited, and the list of permitted businesses be eliminated. Mr. Owen asked for comments regarding the Planning Commission's recommendations. Mr. Owen read the proposed list of businesses permitted to have signs. Mr. Owen stated the purpose for these signs should be for the purpose of identification not for promoting a business. Mr. Averill stated he was in favor of the signs not being lit. Mr. Owen stated the lighting regulations for residential areas should be followed. He suggested that regulation 12.15 should be included and more specific about the lighting of signs. Ms. Hill stated that lighting of signs was not addressed however; the Zoning Regulations state if it is not listed as permitted it is prohibited. Mr. Owen stated the Zoning Commission will revisit this issue and at this time the regulation prohibits lighting of signs in residential districts.

Motion: to close the Public Hearing to consider the revision of the Zoning Regulation/16.4.1/ To allow Certain Business and Institutional Signs in the Residential Districts, by Mr. Fitzherbert, seconded by Mr. Averill, by a 5-0.

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

Mr. Owen read a list of items that were added to the file. Mr. Szymanski was present to represent the Conlons for this application. He presented a written statement that the owner will reside on the premises for the duration of the permit. Mr. Szymanski and the members looked at the Studio/Garage Elevations, prepared for the Conlon Residence, Sheet # A-5, by Wesley H. Quigley III Architecture and Design, revised on March 23, 2009. The revised plans conform to the height requirements of the Zoning Regulation for an accessory building. Mr. Szymanski stated the accessory apartment contains 38.3% of the ground floor area of the main house and is in conformance with Zoning Regulation 12.5.2. Mr. Szymanski stated the Conlons received a variance of Sections 12.1.1, 12.1.2, 12.1.3 and 11.6.1 from Zoning Board of

Appeals and will be filing it on the Town Land Records. Ms. Hill stated she notified the Towns of Warren and Litchfield regarding this application and did not receive a response.

Motion: to close the Public Hearing to consider Conlon/6 Valley Road/Special Permit: Section 13.11.3/Detached Accessory Apartment, by Mr. Fitzherbert, seconded by Mr. Abella, by 5-0 vote.

Harris/258 New Milford Turnpike/Special Permits: 1) Section 9.4.1.d/Restaurant-Addition, Site Improvements 2) Section 9.6.8/Request for Waiver of Building Setback from Residential Property Line:

Ms. Hill read the legal notice published in Voices on 3/11/09-3/18/09. Mr. Owen listed the contents in the file and read Ms. Hill's Administrative Report dated 3/23/09. Mr. Harris stated he is proposing to build an addition on an existing 12' x 20' concrete slab that will provide storage for utilities and liquor and to build a portico at the front entrance of the building that will be ADA compliant. Mr. Owen read the ZEO report dated 3/23/09. The report states that Mr. Harris has received approval from both Inland/Wetlands and ZBA for the proposed plan. Mr. Harris submitted a letter from the adjoining residential property owner approving all of the proposed changes. Ms. Hill suggested the commission make a separate motion to waive the 50 ft. setback requirement in 9.6.8 as Section 9.6 refers to a waiver by the commission. Ms. Hill asked if the sign would be lit. Mr. Harris said it would be lit with Dark-Sky friendly lighting.

Motion: to close the Public Hearing to consider Harris/258 New Milford Turnpike/Special Permits: 1) Section 9.4.1.d/Restaurant-Addition, Site Improvements 2) Section 9.6.8/Request for Waiver of Building Setback from Residential Property Line, by Mr. Averill, seconded by Mr. Fitzherbert, by 5-0 vote.

2M Properties/278 New Milford Turnpike/Special Permit: Section 9.4.1.h/Convert 2nd Floor Apt. to Office and Staff Area for Aspetuck Animal Hospital:

Ms. Hill read the legal notice published in Voices on 3/11/09-3/18/09. Mr. Owen read the list of the contents in the file. Dr. Gorra explained there would not be any exterior changes. Ms. Hill stated building would be changing from part residential/ part commercial to all commercial.

Motion: to close the Public Hearing to consider 2M Properties/278 New Milford Turnpike/Special Permit: Section 9.4.1.h/Convert second floor of existing commercial building to office and staff area, by Mr. Owen, seconded by Mr. Fitzherbert, by 5-0 vote.

LaVerge/226 Bee Brook Road/Special Permit: Section 13.13/Bed and Breakfast Establishment:

Ms. Hill read the legal notice published in Voices on 3/11/09-3/18/09. Mr. Owen read the list of the contents in the file. Ms. Hill read her administrative report, dated 3/23/09. The 3/23/09 email sent by adjoining property owners, Mr. & Mrs. Mathews, (copy on file in Land Use Office) stated a concern about traffic on the shared driveway with Ms. Laverge. Atty. Fisher was present to represent Ms. Laverge. He stated that the Laverge property is 42 acres and a one-bedroom bed & breakfast should not have any impact on the adjoining properties. Ms. Hill and the commission looked at the Lot Line Revision, Site Analysis Plan, prepared for Regine Laverge, by T. Michael Alex, dated April 1993.

Motion: to close the Public Hearing to consider Laverge/226 Bee Brook Road/Special Permit: Section 13.14/Bed and Breakfast Establishment, by Mr. Owen, seconded by Mr. Fitzherbert, by 5-0 vote

Bennett/80 East Shore Road/Special Permit: Section 6.5/Addition to Dwelling within 50-75 ft. of Lake Waramaug:

Ms. Hill read the legal notice published in Voices on 3/11/09-3/18/09. Mr. Owen read the list of the contents in the file. Mr. Neff was present to represent Ms. Bennett. He presented the Storm water Management & Landscape Plan/Addition to the Bennett Residence, by Brian Neff, dated 2/21/09. Mr. Neff stated the closest point of the house is 62 ft. from Lake Waramaug. He explained the proposed plan is to convert the house from a 1 ½ to a 2 story home. It was confirmed that the Inland Wetlands Commission has approved the proposed plan. Mr. Tom McGowan of the Lake Waramaug Task Force was present and looked at the Storm water Management & Landscape Plan. Mr. Neff explained how they storm water management system would work. Mr. McGowan stated the system would need to be cleaned out periodically as there would be sediment build up. Mr. Neff stated the system would need some maintenance that would be dependent on the amount of rainfall. Mr. McGowan asked that there be a condition put on the approval that the owner acknowledges that the system needs to be maintained in order to operate properly. Mr. McGowan asked about the septic system. Mr. Neff explained that the existing septic system is not failing so it will be used for now and an area on the upper portion of the property has been located for a new system when necessary. Mr. McGowan asked about the parking space along the road. He stated the LWTF would like to see the parking away from the lake. Mr. Neff stated there is not an increase in impervious surfaces and there will be a reduction in storm water run off due to the addition of the roof system for the proposed project. He stated the existing parking is on state property and there would have to be extensive blasting on the owner's property along June Road if they were to provide parking away from the lake. Mr. Papson does maintenance for this property and was present. He stated the catch basins along East Shore Road clog up in the fall and the leaves on the property should be cleaned up once or twice a year.

Motion: to close the Public Hearing to consider Bennett/80 East Shore Road/Special Permit: Section 6.5/Addition to Dwelling within 50-75 ft. from Lake Waramaug, by Mr. Owen, seconded by Mr. Fitzherbert, by 5-0 vote

REGULAR MEETING

Regular Business

Mr. Owen called the Regular Meeting to order at 8:55 pm
Seated: Mr. Owen, Mr. Abella, Mr. Averill, Mr. Fitzherbert, Mr. DuBois

Consideration of the Minutes

Motion: to accept the Zoning Meeting Minutes of February 23, 2009 as submitted, by Mr. Owen, seconded by Mr. Averill, by 5-0 vote.

Other Business

Revision of the Zoning Regulations/Section 9.2.3/Add Offices to Permitted Uses under Specific Circumstances in the Marbledale Business District:

Mr. Owen asked if there were any questions or comments from the commission.

Motion: to approve the revision of the Zoning Regulations/Section 9.2.3/Add Offices to Permitted Uses under Specific Circumstances in the Marbledale Business District, by Mr. Owen, seconded by Mr. Abella, by 5-0 vote

Revision of Zoning Regulations/Section 12.14.5/Noise Generating Equipment:

Mr. Owen asked if there were any questions or comments from the commission.

Motion: to approve the revision of the Zoning Regulations/Section 12.14.5/Deletion of Special Exception Provisions for Generators, Air Conditioners, Pool Filters, and Other Noise Generating Equipment, by Mr. Owen, seconded by Mr. Fitzherbert, by 5-0 vote.

Revision of Zoning Regulations/16.4.1/To allow Certain Business and Institutional Signs in the Residential Districts:

Mr. Owen read the proposed revision to section 16.4.1. He asked if there were any questions or comments from the commission.

Motion: to approve the revision of the Zoning Regulation/16.4.1/ To allow Certain Business and Institutional Signs in the Residential Districts, by Mr. DuBois, seconded by Mr. Abella, by a 5-0 vote.

Pending Applications

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

Mr. Owen stated that two conditions had been mentioned: 1) The variance is recorded on the land records and 2) an As Built regarding height is submitted. He asked if there were any questions or comments from the commission.

Motion: to approve the Special Permit application: Section 13.11.3 submitted by Conlon for a Detached Accessory Apartment at 6 Valley Road, with the condition(s) that 1) the variance be recorded on the Town Land Records before the permit is issued, and 2) An As-Built be submitted to the Town to confirm the height of the accessory building meets the Zoning Regulations before the certificate of zoning compliance is issued, by Mr. Owen, seconded by Mr. Abella, by 5-0 vote.

Harris/258 New Milford Turnpike/Special Permits: 1) Section 9.4.1.d/Restaurant-Addition, Site Improvements 2) Section 9.6.8/Request for Waiver of Building Setback from Residential Property Line:

Mr. Owen read section 9.6.8. He asked if there were any questions or comments from the commission.

Motion: to waive Zoning Regulation/Section 9.6.8 in regard to side yard setback for the Special Permit application submitted by Harris/258 New Milford Turnpike, by Mr. Owen, seconded by Mr. DuBois, by 5-0 vote.

Motion: to approve the Special Permit application: Section 9.4.1.d submitted by Harris for Restaurant-Addition, Site Improvements at 258 New Milford Turnpike, by Mr. Owen, seconded by Mr. DuBois, by 5-0 vote.

2M Properties/278 New Milford Turnpike/Special Permit: Section 9.4.1.h/Convert 2nd Floor Apt. to Office and Staff Area for Aspetuck Animal Hospital:

Mr. Owen asked if there were any questions or comments from the commission.

Motion: to approve the Special Permit application: Section 9.4.1.h submitted by 2M Properties to convert 2nd floor to Office and Staff area for Aspetuck Animal Hospital at 278 New Milford Turnpike, by Mr. Averill, seconded by Mr. DuBois, by 5-0 vote.

LaVerge/226 Bee Brook Road/Special Permit: Section 13.13/Bed and Breakfast Establishment:

Mr. Owen asked if there were any questions or comments from the commission.

Motion: to approve the Special Permit application: Section 13.14 submitted by Laverge for Bed and Breakfast Establishment at 226 Bee Brook Road, by Mr. Owen, seconded by Mr. Abella, by a 5-0 vote.

Bennett/80 East Shore Road/Special Permit: Section 6.5/Addition to Dwelling within 50-75 ft. of Lake Waramaug:

Mr. Owen read the condition for approval of this special permit. He asked if there were any questions or comments from the commission.

Motion: to approve the Special Permit application: Section 6.5 submitted by Bennett for Addition to Dwelling within 50-75 ft. of Lake Waramaug at 80 East Shore Road with the conditions that: 1) Cultec C-4 Roof Infiltration System be maintained properly by the home owner, and 2) Proof the variance has been filed on the Town Land Records be submitted to the Land Use Office, by Mr. Owen, seconded by Mr. Abella, by a 5-0 vote.

New Applications

Winans-Vincent/181 New Milford Turnpike/Special Permit: Sections 9.4.1.i/Storage Facility for Small Scale Business:

Ms. Hill updated the commission on the property. She noted the applicants proposed storage for their masonry business and to erect a sign

Motion: to schedule a Public Hearing on April 20, 2009 to consider the Special Permit application – Winans-Vincent/181 New Milford Turnpike: Section 9.4.1.i/Storage Facility for Small Scale Business, by Mr. Owen, seconded by Mr. Abella, by 5-0 vote.

Other Business (continued)

Preliminary Discussion/Petition to Amend Zoning Regulations to Allow Dispatch Offices for Local School Transportation by Special Permit in the B-2 District:

Mr. Dennis McMorrow, Engineer, from Berkshire Engineering and Surveying, LLC. and Atty. James Steck of Herbst & Herbst, LLC. were present to discuss the Feasibility Layout Plan, #2, prepared for All Star Transportation/80-82 Bee Brook Road, by Berkshire Engineering and Surveying, LLC., dated 2/16/09. Mr. Owen stated that the use of this property would require more coverage than what is permitted in this zone although the existing coverage was already over the maximum permitted. Atty. Steck stated the proposed joining of the two lots results in a decrease in the percentage of coverage. Mr. Fitzherbert stated that in previous situations there have been trade offs when there has been an improvement in appearance of the area. Mr. Owen stated the town needs school buses and this would be an improvement. Mr. Steck stated there would be a reduction in curb cuts and more room for landscaping. There was a discussion among the members, Atty. Steck and Mr. McMorrow about amending the regulation to specifications for this specific dispatch office. Mr. Owen stated the Zoning Commission would be willing to pursue such a request and this was a topic that would have to be discussed with Atty. Zizka.

Privilege of the Floor

Mr. Papson asked if there were any regulation for free standing solar panels. Mr. Owen stated they would have to be treated as a structure. Mr. Owen stated the regulations need work with how they relate to wind turbines and windmills. Ms. Hill stated she thought that solar panels are exempt from the Historic District Regulations.

Communications

3/08 letter from Mr. Talbot re: Lot Coverage and Creation of Parcels:

Ms. Hill stated Atty. Zizka advised the Zoning Commission could not make any policy statements about this type of situation and cannot guarantee that it will not happen again in Washington. And, if it does the commission will have to evaluate each case on its own.

2/23/09 letter from Mr. Sedito/ZBA:

Mr. Owen stated the question regarding windmills has been resolved as far as ZBA is concerned but not where the Zoning Regulations are concerned. The question regarding 17.5.c.1 does refer to accessory buildings only. The question regarding wetlands setback is still being worked on.

Enforcement

The Zoning Commission read the 3/23/09 ZEO report.

Discussion of Pending Litigation/Wykeham Rise, LLC.

Mr. Owen stated that another neighbor has applied to be an intervener in the case. Atty. Zizka asked the Zoning Commission to discuss if anyone opposes this neighbor having intervener status. No one from the commission opposed. The commission selected Mr. Owen, as the Chairman, to be the representative for the Zoning Commission. The Zoning Commission also had no objection to the mediator recommended by Atty. Zizka.

Motion: for Mr. Owen, Chairman of the Zoning Commission, to represent the Zoning Commission at Mediation Sessions re: Wykeham Rise, LLC., by Mr. Fitzherbert, seconded by Mr. Abella, by 5-0 vote.

Adjournment:

Motion: to adjourn at 9:45 pm by Mr. Fitzherbert, seconded by Mr. Owen

FILED SUBJECT TO APPROVAL:

Shelley White, Land Use Clerk

4/1/09

