

• April 18, 2006

Special Meeting

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

MEMBER ABSENT: Mr. Martin

ALTERNATES PRESENT: Mr. Shapiro, Mr. Wyant

STAFF PRESENT: Mr. Ajello, Mrs. Hill

ALSO PRESENT: Atty. Zizka, Atty. Ebersol, Mr./Mrs. Allen, Mrs. White, Mr. Boling, Mr. Gitterman, Mrs. Mathews, Mrs. Federer, Mr. Papsin, Mrs. Condon, Ms. Stevens, Mr. Sears, Mr. Worcester, Ms. DeMeo, Press

PUBLIC HEARING

Myfield, LLC /7 Mygatt Road/13 Dwelling Units/Con't.

Mr. Owen reconvened the public hearing at 7:30 p.m. and seated Members Averill, Fitzherbert, Friedman, and Owen and Alternate Wyant for Mr. Martin.

Mr. Owens noted the list of documents that had been received since the last session of the public hearing on 3/27/06, plus the 4/18/06 letter from Mrs. Mathews, which was submitted this evening. He also noted the 4/18/06 memo from Ms. Von Holt, Town Sanitarian, which stated she did not foresee any obstacles for State Health Department approval.

Mrs. Friedman asked how the Inland Wetlands Commission had conditioned its approval of the revised plans. Atty. Ebersol read the motion of approval, which required a review and approval by that Commission's engineer and if he raised any concerns, that they be addressed to his satisfaction by the applicant.

Mr. Worcester, architect, submitted his revised map, "Proposed Site Plan, 13 Detached 1904 Sq. Ft. Unit Scheme," dated 3/26/06 and revised to 4/4/06 (based on the January 2005 survey by Mr. Alex). Mr. Boling explained the only change was to more evenly space the 13 dwellings, which resulted in more space between the barn-garage structures. He said this provided more screening of the houses from the road. He presented the rendering, "13 Unit Front View," by Mr. Worcester, dated 4/18/06, which depicted red garages with white houses. He stated the houses would be identical basic structures, but would have varying doors, entries, and shutters for visual variety. Sections of fencing had also been introduced in the front yards for a "paddock area" effect in front of the parking courts. The parking courts would be made of pervious pavers. He noted that due to the position of the garages and the vegetation along Mygatt Road, it was unlikely the entire row of houses could ever be viewed at once from the Town road.

Mr. Worcester reviewed the floor plans, "Myfield Housing, Typical House," sheets A-1 and A-2, by Mr. Worcester, dated 4/2/06. It was noted each unit would have a rear deck. Changes made since the Commission had first seen floor plans included the elimination of the front "bump out" and a decrease in the number of bedrooms from 3 to 2. Mrs. Friedman asked if a future owner could add a bedroom. Mr. Boling said Health Dept. approval would be required to do so. Mrs. Friedman asked if owners would be permitted to expand their houses. Mr. Boling stated this would be an increase in a non conforming structure so both a zoning permit and a variance would be required.

Mrs. Friedman asked where the affordable units would be located. Mr. Boling said he did not know at this time, but that there would be one affordable unit built for each two market rate units sold. That way, at any one time one third of the units would be affordable. Mr. Boling thought the lowest priced house would be on Mygatt Road, but agreed to disperse the rest throughout the development.

The stockade fence shown between the dwelling units was discussed. Some commissioners favored removing it completely, while others favored a trellis instead. Mr. Boling noted the sections of fence provided some privacy and offered to vary the styles of fence.

Mr. Shapiro asked about the trees to be planted along the common driveway. Mr. Boling said they would probably be 6 to 8 ft. tall sugar maples.

Atty. Ebersol summarized the proposal. He said the issue of comparability had been satisfied because there was no distinction in the floor plans or look of the proposed units. In addition, he said the plan fit the rural character of Washington and the immediate neighborhood and satisfied the requirements of Section 8-30g of the state statutes. He noted there were no outstanding health or safety issues and asked the Commission to voice any concerns before the close of the hearing so the applicant would have the opportunity to respond to them. If there were no concerns, he said he hoped it would vote to approve the application tonight.

Mr. Owen read the 4/18/06 letter from Mrs. Mathews, Quarry Ridge, against the application.

Mrs. Allen, Quarry Ridge, was opposed to the proposed site plan. She said the site development plan was not in keeping with the rural character of the Town and that the proposed 13 units and the accessory buildings were too many buildings for that one property. She complained Quarry Ridge residents would be looking at a row of barns and asked why the garages couldn't be attached to the houses.

Mrs. White agreed with Mrs. Allen, saying 13 units was far too many and that the road would not be able to accommodate the additional parking. She, too, said the plan was not in keeping with the rural character of the area.

Mr. Allen, 40 Quarry Ridge, noted he was a advocate of affordable housing. He asked if the units would have a condo association. The answer was that they would. He asked how many bedrooms would be in each unit. He was told there would be 2 bedrooms in each. He asked how much the units would be sold for. Mr. Boling said the sale price had not yet been determined. Mr. Allen said he wanted to know how the sale price would compare with the Quarry Ridge units. Mr. Owen did not think this had any bearing on the application.

Mr. Papsin, 30 Mygatt Road, thought the project was too ambitious for such a small field. He complained the existing bad intersection at Mygatt and Scofield Hill Roads would not be able to handle the increase in traffic. He asked if a traffic engineer had reviewed the application. When Mr. Owen told him this had not been done, Mr. Papsin asked the Commission to look into this problem.

Mrs. DeMeo asked how many barns there would be. Mr. Boling said there would be 6 and one additional that would only be half the size of the rest.

Ms. Stevens asked if the barns would be located close to the road. Atty. Ebersol said they would be set back 12 feet from the private driveway. He also pointed out the open space/conservation easement areas.

Mrs. Friedman asked where the proposed units were in relation to the Quarry Ridge units. Atty. Ebersol pointed out the location of both on the site plan.

Ms. Stevens voiced her concern about such density of dwelling units on this small stretch of Mygatt Road. She noted that in addition to the units there would be deliveries, visitors, etc.

Mrs. Friedman asked Mr. Sears, First Selectman, whether the Town had any plans to improve Mygatt Road. Mr. Sears said the Town had applied for a grant and would make significant improvements if it were granted. If not, he was not sure when any work would be done. Mrs. Friedman asked if visibility had been reviewed. Mr. Sears said Mr. Cannavaro inspected for visibility at the time the driveway cut was approved. Mr. Boling noted the driveway approval for the curb cut had been included in the application submitted and that the bad intersection referred to earlier was several hundred feet south of the proposed driveway entrance.

Atty. Ebersol pointed out: 1) Quarry Ridge was a greater density than the proposed development, 2) more than 80% of the property would be placed under a conservation easement, and 3) parking for the units would be in the barns and in the courts in front of each house and the overflow would be on hard shoulders along the driveway.

Mr. Fitzherbert asked how far apart the garage-barns would be. Mr. Worcester said they would be 80 to 90 feet apart.

Mr. Ajello thought snow removal could be difficult in the parking courts. Mr. Worcester said there would be border areas that could accommodate snow piles between the houses and the courts.

Mrs. Friedman asked about the absence of kitchen appliances, saying she wanted to make sure the units would stay affordable. Mr. Boling said each owner would purchase his own appliances. She asked how the Commission could be certain the cost of the appliances would not increase the cost of the units so they would no longer qualify as affordable. Atty. Ebersol noted a basic stove and refrigerator would total \$1500, that most modular homes come without appliances, and that most first time buyers get a large enough mortgage to purchase appliances.

MOTION: To close the public hearing. By Mr. Fitzherbert, seconded by Mr. Wyant.

Atty. Zizka advised the Commission not to close the hearing until the applicant had the opportunity to respond to all concerns that it might raise.

Vote: 0-5.

Atty. Zizka noted the state Affordable Housing Appeals Act significantly shifts the burden to Zoning Commissions to put on the record any reasons for denial. He stated those reasons had to be within the jurisdiction of the Commission and had to be substantial enough that they would outweigh the need for affordable housing. Further, there would have to be sufficient information submitted for the record to prove that those concerns were grave enough to merit a denial. In response to some of the points raised earlier by the public, he advised: 1) The court had never allowed density as a valid reason for denial. In fact, he explained greater density was needed to make affordable housing viable. 2) Although traffic congestion and road capacity are factors to consider, bad conditions at an already existing intersection would not be a valid reason to deny the application. Also, there would have to be substantial information submitted for the record to prove there were substantial traffic problems. 3) Even if significant problems are determined to exist, the Commission must consider whether they could be reduced by conditions of approval. A denial can happen only when it is absolutely necessary because there are no possible conditions that will solve the problems. 4) There is no provision in the Affordable Housing Act that requires furnished units. 5) Regarding the appearance of the buildings, he explained there could be no conditions of approval that would affect the financial viability of the project, but he did not know whether the court would uphold conditions that did not affect the financial viability. 6) State law requires the developer to submit a financial plan to show how the requirements of the statute will be met. Atty. Ebersol noted a detailed plan had been submitted with the application. 7) The applicant is not required to specify the prices for the market rate units. 8) The proposed units meet the requirements for comparability, although they were not required to be identical. 9) Septic and water supply issues could be considered by the Commission but there would have to be substantial information in the record to show they would not be adequate. Concern was not enough, he said, there must be substantial proof. He noted, however, that the courts recognize those concerns are addressed by state agencies and the Affordable Housing Act does not trump the state health code.

The Commission commented and discussed its concerns.

- Mr. Owen said it was important the affordable units be spread throughout the development and not segregated in one area. Atty. Ebersol said the applicant was willing to so stipulate. Mr. Owen noted the applicant had addressed every concern raised by the Commission and he did not think there was any basis for a denial.
- Mr. Shapiro said some of the commissioners were concerned about the appearance of the units, but that this was not a legal basis for denial. Atty. Zizka agreed, but said the court might uphold conditions of approval regarding appearance if they did not affect the financial viability of the plan and if the Zoning Regulations contained such standards. Mr. Shapiro questioned why a line of houses was proposed. Mr. Boling explained they had been pushed as far from the wetlands as possible by the Inland Wetlands Commission.
- Mr. Abella noted the Commission had reviewed a 10 unit application for months and now it had been increased to 13 units. He thought that was a large increase. Mrs. Friedman noted the number of bedrooms had decreased.
- Mr. Wyant said he was satisfied with the information presented.
- Mr. Averill stated on the advice of counsel, he could not justify a denial.
- Mr. Fitzherbert did not like that all the buildings would be identical. He said he expected some variations that would improve the character of the units and noted they did not have to be identical to be comparable. Atty. Zizka read the court decision regarding comparability and

agreed the units did not have to be identical, but did have to be approximately equal. Mr. Fitzherbert asked if the applicant would be willing to add 100 sq. ft. to some of the units to vary their appearance. Mr. Boling said it would be difficult to modify the modular construction and said the size of the affordable units could not be expanded. Mr. Fitzherbert asked if bay windows could be added to some of the units. Mr. Boling said the applicant had decided not to use bay windows because they were not used in traditional New England farmhouses. He offered to vary the color of the barns even though he did not think it would look good. Mrs. Friedman and Mr. Owen agreed that was not a good idea. Mr. Fitzherbert objected to the straight driveway, saying people would drive faster because it was straight. Mr. Boling said there was a slight curve and that it would be a 12 ft. wide gravel lane with a narrow feel, which should discourage speeders. Mr. Fitzherbert asked what type of heat would be installed. Mr. Worcester said it would be forced air.

Comments again were taken from the public.

Mr. Papsin asked if the plans included back up septic systems. Atty. Ebersol said there was a reserve system approved for each individual septic system.

Mrs. White asked that the size of the development be reduced. She said there were too many units and too many garages. Atty. Zizka again stated that density was not a reason for denial that would be upheld in court. Mr. Owen briefly explained how the state statute takes authority away from local commissions and provides developers with the tools to create affordable housing. Mrs. White assumed the Myfield septic systems were connected to Quarry Ridge, but Atty. Ebersol stated there were individual septic systems for Myfield and they did not connect with Quarry Ridge.

Mr. Allen thought the barns should be red because that was the traditional New England color.

Mr. Boling stated to preserve the character along the road and buffer the buildings the existing hedgerow along Mygatt Road would not be taken down. Mr. Ajello noted even with the hedgerow there were good site lines for the driveway cut.

Mr. Sears thanked the applicant for working with the Town commissions to draft the best plan possible, while working to meet the Zoning standards and Town goals, and preserve open space. He said this application would be a model for future applicants. Atty. Zizka noted cooperation and a collaborative effort between the Town and a developer was unusual for affordable housing applications.

Mr. Owen noted the current proposal would increase the affordable housing stock in Town, but noted, too, that moderately priced units were also needed in Washington.

MOTION: To close the public hearing to consider the application submitted by Myfield, LLC. for 13 Dwelling Units at 7 Mygatt Road. By Mr. Fitzherbert, seconded by Mr. Wyant, and passed 5-0.

At 8:50 p.m. Mr. Owen closed the public hearing.

This public hearing was recorded on tape. The tape is on file in the Land Use Office, Bryan Memorial Town Hall, Washington Depot, Ct.

Special Meeting

Myfield, LLC /7 Mygatt Road/13 Dwelling Units

All the Members seated at the hearing remained seated.

Mr. Owen asked if there was any reason not to act tonight on the application. Mr. Ajello asked if the Commission should wait until the Inland Wetlands Commission's condition of approval was satisfied. Atty. Zizka responded that Zoning was not constrained by Inland Wetlands, which was advisory only.

The commissioners discussed possible conditions of approval, which resulted in the motion below.

MOTION: To approve the application submitted by Myfield, LLC. for 13 Dwelling Units at 7 Mygatt Road per the map, "Proposed Site Plan, 13 Detached 1904 Sq. Ft. Unit Scheme" by Mr. Worcester, dated 3/26/06, and revised to 4/4/06 subject to the following conditions:

1. No two affordable units shall be adjacent to each other in the row of units.

Vegetative screening of some kind shall be created and maintained on the Mygatt Road roadside at the end of the row of units between the driveway and the back line of the units to screen them from the road.

2. Fences between the units are optional.

Approval is granted based on the design presented, and any changes in design shall come back to the Zoning Commission for review.

By Mr. Owen, seconded by Mrs. Friedman, and passed 5-0.

Revision of the Zoning Regulations/Setbacks and Coverage in the New Preston and Washington Depot Business Districts and Section 15: Parking

Mr. Owen noted the purpose for the proposed revisions was to enable the Zoning Commission to permit development, which is similar to that already existing in the business districts, but would not be permitted under the current Regulations. Opportunities for greater density and coverage and decreased setbacks would make possible development more in keeping with the existing village character. He noted the existing Regulations create sprawl to escape sprawl.

Atty. Zizka noted the second draft dated 3/27/06 addressed many of the concerns he had raised about draft #1 and he thought it was good that the parking revisions were based on the model regs written by area councils of governments. He made the following points:

- Although he had no problem with flexible dimensional standards, he noted flexible standards would be tougher for the ZEO to use.
- The ZEO is supposed to apply the Regulations consistently, so flexible standards would have to be applied by the Commission.

- The proposed revisions give the Commission the ability to be flexible if certain specific standards are met. He thought this approach made sense and was consistent with the existing Regulations.

Mr. Ajello thought the proposed regulations would be an impetus for taller buildings and thought height should be discussed in relation to parking, setbacks, and density. Mr. Owen noted the regulations for maximum height were not being revised and said he did not think there was a need to allow taller buildings. He said the purpose of the proposed regs was to make what was already existing "doable."

Mr. Owen explained one issue that had not yet been addressed was non conforming uses and structures. He noted when the Zoning Regulations were adopted it was the intent to phase out all non conformities, but that this was no longer the goal. He said the non conformities contribute to making the Depot and The Green charming and give them their unique character. He suggested the Commission should consider in the future the idea of extending flexibility to allow increased density in other parts of Town.

Mr. Owen briefly addressed parking. He knew of no guiding theory behind the current parking regulations, which require a huge number of spaces, and stressed the proposed revisions were based on the model regulations drafted by the area councils of governments.

Mr. Sears noted the Town's business owners were aware that parking is a serious issue and said he would speak at the Zoning 4/24 meeting about it. He suggested a joint meeting of the Planning Commission, Zoning Commission, and Board of Selectmen to conduct a comprehensive discussion about parking. He raised several issues including fees in lieu of parking, the Town's responsibility for public parking, possible reconfiguration of the existing parking spaces in the Depot, the Bryan Plaza parking plan, and employee vs. customer parking spaces. Atty. Zizka questioned whether a fee in lieu of parking could be implemented as the court has ruled that only fees allowed by state law may be allowed. He thought perhaps it could be made optional and recommended the Town consult with its state legislators.

Atty. Zizka reviewed the 4/21/06 draft and made the following recommendations:

Sect. 7.5: Add that site plan review will be the process for approval.

7.5.2: Add a sentence that if the applicant proposes to use this standard, then in addition to the other information required under Section 14.3, the applicant shall be required to provide any other reasonable information, such as graphic information on neighborhood buildings, on the site plan.

7.6.6: Add that site plan review will be the process for approval.

Mr. Owen asked whether the Commission could decide a formal site plan review by the Commission was not required. Atty. Zizka noted that the existing Section 14.5 provides the applicant the opportunity to request a waiver.

8.5 and 8.6: Again, the reference to site plan reviews should be added.

15.2: At the beginning add the phrase, "Unless modified by the Commission...."

15.3.1: A reference to site plan reviews should be added.

15.3.2: This section will be worded to make it clear the Commission has the flexibility to require more parking spaces if it decides it is necessary.

15.4: Mr. Sears asked if the term, unreasonable, was clear. Atty. Zizka noted it is commonly used in court.

15.5: A reference to site plan reviews should be added.

Conduct of Public Hearings

Mr. Owen noted the Zoning Commission usually does not deliberate during its public hearings and asked Atty. Zizka whether this was the correct procedure. Atty. Zizka responded that the courts address fundamental fairness by saying the applicant must be given reasonable opportunity to respond to any substantive comments the Commission may make. Therefore, he suggested that guidelines concerning the conduct of hearings be established to maintain the Commission's control over the proceedings, while allowing the applicant adequate time to address concerns. He also recommended that the Commission not take a straw vote while the hearing is open because commissioners are not supposed to make up their minds until all the information is in and the hearing is closed. Atty. Zizka reminded the commissioners they may not raise new issues after the close of the hearing, so when in doubt, they should keep the hearing open.

Mr. Owen thanked Atty. Zizka for his help and advice.

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

Mr. Owen adjourned the meeting at 10:14 p.m.

FILED SUBJECT TO APPROVAL

Respectfully submitted,

Janet M. Hill

Land Use Coordinator