

May 19, 2008

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

MEMBER ABSENT: Mr. Abella

ALTERNATES PRESENT: Mr. DuBois, Mr. Shapiro, Mr. Wyant

STAFF PRESENT: Mr. Ajello, Mrs. Hill

ALSO PRESENT: Atty. Fisher, Mr. Klauer, Atty. Olson, Mr. Todorski, Mr. Papsin, Mrs. Auchincloss, Mr. Hunt, Mr. Hileman, Mr. Szymanski,

Mr. Cornet, Mr. Mustich, Mr. Owens, Mr. Boyer, Residents, Press

Mr. Owen called the Public Hearings/Regular Meeting to order at 7:34 p.m. and seated Members Averill, Fitzherbert, Friedman, and Owen and Alternate Wyant for Mr. Abella.

PUBLIC HEARINGS

Revision of the Washington Zoning Regulations/Section 13.11.1/ Accessory Apartments

Mr. Owen noted this Public Hearing had been continued from January and he read the documents in the file, which had been submitted since then. He noted the surrounding councils of government reported that the proposed revision would not affect them and that they had no further comment.

Mr. Owen summarized the proposal to limit the number of accessory apartments per property to one; either attached or detached, unless one of them was deed restricted as "affordable housing." (Reference to state definition of "affordable housing" in quotations, to affordable housing in general, no quotations) He read the definitions of "affordable housing" and median income. He briefly reviewed the intent of the Commission when it first adopted this section of the Regulations and said it had been effective in increasing the number of accessory apartments in Town. He explained the reasons for the proposed revision were to address the Commission's concern that property owners were now using this section to get around the Town's Zoning Regulations and to increase the Town's stock of "affordable housing" per the state definition.

Mr. Owen asked for comments from the public.

Mr. Hileman read his 3/24/08 letter to the Zoning Commission on behalf of the Housing Commission against the proposed revision, which concluded that it was well intentioned, but would do little to promote "affordable housing."

Mr. Mustich he basically agreed with Mr. Hileman's statements.

Mr. Cornet stated that that state regulations for "affordable housing" were a "sham;" that under the current Zoning Regulations actual affordable housing in Town had been created, and the proposed revision was an "onerous" regulation.

Mr. Boyer stated that the Washington Community Housing Trust agrees with Mr. Hileman and the Housing Commission that the existing regulation should be supported. He noted that property owners would not deed restrict their apartments and so the revision would actually limit the number of "affordable" units.

Mrs. Frank noted the existence of several large apartments throughout Town and questioned what the term, "accessory," means. Mr. Owen noted this section of the Regulations had been amended previously to state that an accessory apartment must be subordinate to the primary structure when apartments had begun to look like separate houses on the same lot.

Mr. Owen noted that at a previous session of the hearing residents had talked about the housing needs of the elderly, relatives, farm help, etc. and said under the proposed revision, these people would still have accessory apartments available to them plus the second apartment on each property would serve the goal of providing "affordable housing."

Mr. Charles said that the Open Space Steering Committee Report had recommended that both open space and housing issues be addressed and that what was needed in Town were "affordable" stand alone privately owned single family dwellings. He asked the Commission to direct its efforts to encourage "affordable" single family houses instead of accessory apartments, which, he said, were only a "stop gap" measure.

Mr. Owen read a portion of a statement on housing needs in Washington, which he had presented at a previous hearing. It summarized the history of the Zoning Regulations regarding housing and the adoption of regulations that permit affordable units to be constructed. It noted the effect these regulations have had on the Town's housing stock since they were adopted. He noted again that the Commission does not want the accessory apartment regulations to be used to circumvent Washington's strict Zoning Regulations and that the intent of the proposed revision was not to reduce the number of apartments, but to make them consistent with the goal of providing "affordable" housing.

Mr. Solly, Selectman, spoke against the proposed revision on behalf of the Board of Selectmen. He noted the accessory apartments permitted under the current regulations have provided needed housing opportunities for caretakers, in-laws, etc. and continue to provide affordable housing.

Ms. Gager spoke for the Washington Planning Commission, which

declined to comment on the proposal until after it meets with the Zoning Commission to discuss the issue of accessory apartments. Mrs. Friedman thought Planning's renewed request to meet with Zoning was reasonable.

Mr. Hileman gave some examples of how difficult the proposed regulation would be to enforce. Mr. Owen responded that difficulty of enforcement was not sufficient reason for deciding against a regulation. He noted the Commission has enforcement tools such as fines and

would enforce its Regulations.

Mr. Charles asked if the Zoning Commission had investigated how much could be charged for rent for an "affordable" apartment, noting that the cost can be very high.

Mr. Cornet stated that many in Town were opposed and that this issue should be voted on at a Town referendum.

Mr. Shapiro agreed with Mr. Boyer that as a practical matter, property owners would not want to deed restrict their apartments. He stated he did not favor the proposed revision.

Mr. DuBois and Mr. Wyant stated they, too, did not support the revision.

Mrs. Friedman supported the revision, but noted her concern about the Commission's ability to effectively monitor the deed restricted apartments.

Mr. Owen noted that when considering amendments to this section, the only point the Commission could agree on was the current proposal to allow two apartments per property only if one was deed restricted as "affordable" housing per state statute. He said if that was no longer the case, the hearing could be closed.

Mr. Ajello noted the discussion to revise this section had begun because the Commission had to deal with a large accessory apartment with large appurtenances and he thought other revisions might better address this problem. Mrs. Friedman noted that was a separate, unrelated issue.

Mrs. Friedman recommended that the Public Hearing be continued until the Commission has discussed accessory apartments with the Planning Commission.

Mr. Owen noted the alternative would be to drop the proposal and asked the other commissioners for their opinions. Mr. Shapiro, Mr. DuBois, Mr. Wyant, and Mr. Averill favored dropping the matter. Mr. Averill noted that Town agencies and the public did not support it. Mr. Owen and Mrs. Friedman welcomed all public comments, but noted the Zoning Commission was bound to vote for whatever it felt was right.

MOTION: To close the public hearing to consider revisions to the Washington Zoning Regulations Section 13.11.1: Accessory Apartments. By Mr. Fitzherbert, seconded by Mr. Wyant, and passed 5-0.

Mr. Owen closed the Public Hearing at 8:09 p.m.

Revision of the Washington Zoning Regulations/Sections 12.15.4, 12.15.9/Outdoor Lighting in Residential Districts

Mrs. Friedman read the legal notice published in **Voices** on 5/7 and 5/14/08.

Mr. Owen noted that the Commission had previously adopted regulations governing outdoor residential lighting said they had been in effect for some time now. (Effective date: 12/17/07) He read the list of all of the documents in the file. He then read the introduction to Section 12.15 and the two proposed revisions. The first, he said, was to correct an error in Section 12.15.9, the non binding recommendations, so that the regulations would now state that walkway lighting should be mounted close to the ground. He noted walkway lighting was most effective when mounted close to the ground and not at eye level and cited 16 Church Street as an example of effective walkway lighting. Secondly, he proposed to delete the phrase, "or because it helps criminals" from the proposed revision to 12.15.9. The most significant revision, he explained, was that proposed in Section 12.15.4 to prohibit light fixtures mounted or attached to trees or other vegetation. Mr. Owen noted some of the lighting in Town that is most contrary to the intent of the lighting regulations is in trees. He said this lighting often reduces visibility, is seldom shielded, shines off site, and lights up the night sky.

Mr. Averill noted that it is a violation of the National Electrical Code to mount lighting fixtures in trees.

Mr. Owens, architect, said to the extent that a tree is in a location where a light is needed, he assumed that putting the light in the tree would be better than erecting a new pole. Therefore, he recommended regulations to govern what type of light fixtures may be used in trees rather than an outright ban. Mr. Owen did not agree and said in places where lighting is needed, a pole could be installed. He noted, too, there was already a height limit of 15 feet for light fixtures.

Mrs. Friedman noted that the current outdoor residential lighting regulations are not retroactive and said the Commission might recommend a Town ordinance so that obnoxious existing outdoor lighting can be controlled.

Mr. Cornet asked if motion sensor lighting was included in the regulations. Mr. Owen said it was. He added that although it would not be permitted in trees, it was encouraged elsewhere.

There were no other questions or comments from the Commission or from the public.

MOTION: To close the public hearing to consider revisions to the Washington Zoning Regulations Sections 12.15.4 and 12.15.9 Re: Outdoor Lighting in Residential Districts. By Mrs. Friedman, seconded by Mr. Fitzherbert, and passed 5-0.

Mr. Owen closed the Public Hearing at 8:21 p.m.

Revision of the Washington Zoning Regulations/Section 13.9/Tourist Home or Inn

At 8:22 p.m. Mrs. Friedman read the legal notice published in **Voices** on 5/7 and 5/14/08.

Mr. Owen read the list of all of the documents in the file. He read the current language of Section 13.9 and noted the question had arisen as to the meaning of Section 13.9.2 regarding the minimum frontage requirement. He explained the majority of the Commission had thought the required frontage must be on a state highway and in a recent application had acted accordingly. However, he and the Commission's attorney believe that the current language does not prohibit the creation of inns on roads other than state highways. He said that the existing regulation was poorly written, and that the Commission, believing that inns should be restricted to state highways, proposed to amend this

section to state clearly that 500 feet of frontage on a state highway is required. He read the proposed language.

Mr. Owen noted that later on the agenda, the Commission would receive an application for an inn under the existing Regulations. He said the Commission could proceed simultaneously with both the consideration of the revision and of the application or could table consideration of the revision to eliminate any potential difficulty the Commission might have in considering the two matters at the same time.

Mr. Shapiro noted the majority of the Commission had held the view that frontage on a state highway was required.

Mrs. Friedman stated that the Commission had begun work to revise Section 13.9 long before the application was submitted. She said she understood they were two separate issues and that she wanted to proceed with the revision so that the section would require what the Commission had previously thought it required. She asked if Atty. Zizka had an opinion regarding whether the Commission should proceed with both. Mr. Owen said Atty. Zizka saw no reason not to proceed. Mr. Fitzherbert, Mr. Wyant, and Mr. Averill said they thought the Commission should proceed with consideration of the proposed revision.

Mr. Owen asked for comments from the public.

Mr. Solley, Selectman, asked if there was a written opinion from Atty. Zizka regarding the interpretation of Section 13.9.2. Mr. Owen said that the only written opinion was the email he had received from Atty. Zizka in response from his question.

Atty. Olson, representing property owners Risley and Federer, spoke in support of the proposed amendment. He said that it was important that the Commission make it absolutely clear and state for the record that the proposed revision is a clarification of its previous interpretation. He said that the Zoning Commission has the right to interpret its own Regulations.

Atty. Fisher objected, saying that the proposed revision was not just a clarification. He noted the current Section 13.9.4, which referred to setbacks from town roads, and which, he said allows inns to have frontage on both state and town roads. Mr. Owen said that Atty. Zizka had agreed with this interpretation.

Mr. Buonaiuto asked why 500 ft. of frontage was required. Mr. Ajello said this would not allow inns on smaller properties where they might have more impact on their neighbors. Mr. Buonaiuto said he did not see the difference between frontage on a state or town road. Mrs. Friedman said his point was well taken, but explained the Commission had always thought the regulation required frontage on a state highway.

Regarding precedent, Mr. Owen said that, insofar as he was aware, the Mayflower Inn's application for its spa was the only one the Commission had received for an inn that potentially had frontage on a town road.

Mrs. Ewing asked when the current application for the inn had been submitted. Mr. Owen said the Commission would receive it at tonight's meeting. He noted, however, that Atty. Fisher had questioned the Commission about this section of the Regulations last fall. Mrs. Friedman agreed, noting the discussion had begun in October 2007.

Mr. Owen read the entire proposed revised Section 13.19 and proposed to add "in addition" to the end of the first paragraph.

Mr. Hunt asked if the application would be considered under the original language even if the proposed revision was approved. Mr. Owen said that was correct; the application would be considered under the regulation in effect on the date it was submitted.

Mr. Lines asked if the Commission was, indeed, proposing to clarify the existing regulation. Mrs. Friedman suggested the interpretation of the existing regulation should be discussed later when the application is considered.

MOTION: To close the public hearing to consider revisions to the Washington Zoning Regulations Section 13.9: Tourist Home or Inn. By Mrs. Friedman, seconded by Mr. Averill, passed 5-0.

Mr. Owen closed the Public Hearing at 8:46 p.m.

The Commission recessed briefly at 8:47 p.m.

Petition to Amend the Washington Zoning Regulations/Sections 11.5.1, 11.5.2, and 21.1.37/Lot Coverage and to Create New Section 11.5.3/Maximum Lot Coverage for Pervious Surfaces, and Add a Definition in Section 21 for "Pervious Traveled Surfaces"

Mr. Owen reconvened the Public Hearings - Regular Meeting at 8:53 p.m.

Mrs. Friedman read the legal notice published in **Voices** on 5/7 and 5/14/08.

Mr. Owen read the list of documents in the file.

Atty. Kelly, petitioner, introduced Mr. Matson from Kent Greenhouse, and a certified installer of pervious surfaces. He noted that pervious surface technology had been around for a while and worked well. He said his petition was triggered by the issue of lot coverage and shared driveways on smaller lots. He said he would present his petition in parts. The first would be to educate and/or convince the Commission that pervious surfaces could be effectively used so that stormwater falling on them does not flow off the property. He provided details about pervious surfaces. These included; there are many types, some are made with recycled materials, all require significant preparation for installation, a certified installer is needed to ensure the installation is done properly, when properly installed they create a basin, which holds runoff and allows it to infiltrate into the ground, and the cost of installation is \$8 to \$12 per sq. ft. compared to \$3 per sq. ft. for pavement.

Mr. Owen asked Atty. Kelly to present his proposed regulation before proceeding further. Atty. Kelly proposed to 1) in Section 11.5.2 to include only paved and impervious traveled surfaces in the computation of maximum lot coverage, 2. in Section 21.1.37, the definition of Lot Coverage, to delete the sentence that driveways, parking areas, and parking lots are included in the lot coverage calculation whether or not they are paved, and to add a sentence that "Impervious traveled surfaces include all driveways, parking areas, and parking lots except those which qualify as "pervious traveled surfaces" as defined hereafter (within this Section 21.)", 3. to add the following definition for "Pervious Traveled Surfaces" in Section 21: "Driveways, parking areas, and parking lots constructed using pervious paving materials designed to meet or exceed the requirements of CSI 32 12 43 and installed by an approved installer or certified by a licensed engineer, 4. to

create a new Section 11.5.3 to require that maximum lot coverage for pervious traveled surfaces shall not exceed 10% of the total land area. Atty. Kelly noted that the 10% cap could be changed by the Commission. He also said that eventually he would like to see walkways constructed of pervious materials removed from the coverage calculations, but said he wanted to begin with driveways and parking areas.

Mr. Owen briefly explained the concept of lot coverage to the public.

Atty. Kelly advised the Commission that industry standards had been developed for pervious surfaces. He then submitted a 9/18/07 memo from Mr. McGowan to Atty. Fisher, which stated that he thought the regulations for the Lake Waramaug Residential District should provide an incentive for common driveways and those that incorporate modern technology. He also submitted Zoning Commission minutes from August 2007 that indicated the Zoning Commission was willing to consider recommendations by Mr. Hackney that it differentiate between pervious and impervious surfaces in its regulations governing the Lake Waramaug District.

Mr. Shapiro asked Atty. Kelly to explain what he felt was the hardship for property owners who have their driveways counted as lot coverage. Atty. Kelly stated that driveways can use up much of the lot coverage allowed on smaller lots and/or interior lots. He agreed that if pervious surfaces were not counted as lot coverage that slightly larger houses could be built, but said if the driveway did not count as coverage, the house would be set back farther from the property line where more effective stormwater control would be possible.

Speaking on behalf of the Planning Commission, Ms. Gager stated that at its last meeting Planning had unanimously agreed to issue no opinion about the proposed petition at this time because it is a significant revision and Planning wanted to discuss the matter in detail with the Zoning Commission prior to making its report.

In response to a question regarding how much credit a property owner would get for installing a pervious surfaced driveway, Atty. Kelly noted the proposed revision limited pervious surfaces to 10% of the lot so that 10% lot coverage as well as 10% pervious surface coverage would be permitted on each lot.

Atty. Olson asked whether the CSI specifications apply to runoff coefficients. Mr. Szymanski, engineer, said he had dealt with this matter at the John Dorr Nature Lab. He compared the .9 asphalt runoff coefficient to the .2 pervious surface coefficient when properly installed.

Mr. Owen noted the petition did not concern any particular product. Atty. Kelly stated that was correct and offered to send a PDF to anyone wanting information on the various types of pervious surfaces.

Atty. Olson said he was concerned that there were many different types of pervious surfaces and all have different ways and efficiencies for handling stormwater runoff. He said since he did not know what the CSI specification said, he was not sure that all products would deserve a 100% credit.

Mr. Charles did not agree that the Zoning Commission should address the hardship of small or interior lots with driveways, which count for lot coverage. He said those property owners may appeal to the ZBA. He feared that if the petition was approved, there would be less incentive for property owners to compact and contain their construction, which would result in more sprawl.

Mr. Cornet advised the Commission to stick with the heart of its Regulations.

Mr. Owen commented that permeability was not the only reason for lot coverage requirements.

Mrs. Frank noted that many lots are very small, less than an acre, and if approval of the petition would result in property owners constructing larger houses, the Town would not be well served. She noted larger houses are not environmentally the way to go.

While Mr. Fitzherbert said the concerns raised were valid, he thought there were many good points about using pervious surface materials. He noted that several years ago Mr. Potter had encouraged the Zoning Commission to address the management of stormwater runoff.

Mrs. Friedman suggested if this was a good idea, the Commission should consider the areas of Town that are the most vulnerable such as those around the lake and with steep slopes and require pervious surfaced driveways and parking areas without offering an incentive. She recommended that Zoning ask the Inland Wetlands Commission what areas it considered to be vulnerable or sensitive. She did not recommend a rewrite of the lot coverage calculation, which, she thought, would be opening Pandora's box.

Mr. Averill did not think it was proper for the Zoning Commission to promote any products. He was concerned about the Commission offering a trade off. If larger houses were possible, he said, then larger houses would definitely be built. He agreed with Mrs. Friedman that the fundamental lot coverage calculation should remain as it is.

Mr. Ajello thought that the Commission should consider not counting pervious surfaced walkways, pool surrounds, and patios as lot coverage.

Mr. Fitzherbert asked for examples of pervious surfaced driveways in Ct. The certified installer noted they had been installed in NJ, NY, and at NASA.

Mr. Owen noted that maintenance could be an issue. He asked how sand would affect the function of a pervious surfaced driveway. The installer said his product required only sweeping and running water over it. Mr. Averill asked about repairs needed due to frost heaves, snow plows, root damage, etc. The installer said the repairs needed would depend on the substrata and that the products had the same freeze/thaw ratio as the ground. He also said that his product would not crack.

Mr. McGowan of the Lake Waramaug Task Force noted that this was an important issue to consider for the Lake Waramaug Residential District. He said the average lot size there is under 2 acres so the average lot coverage permitted there now is 15%. He noted, too, that when coverage exceeds 10% to 15% the result is the degradation of water quality. He noted the simplicity of the current 15% maximum coverage was a "tremendous advantage," but recommended that the petition be discussed. He made the following points: 1) the ZEO would have to monitor all installations because the proper sub base and installation was essential to the proper function of the driveway, 2) the effect on the residential district must be considered. He noted the 2003 Plan of Conservation and Development recommended that Zoning consider house sizes in relation to lot sizes by implementing a floor area ratio requirement. He said that larger houses on small lots would affect the aesthetics of the district. He recommended the commissioners drive around Bantam Lake in Morris, a town where impervious surface does not count towards lot coverage, to see what could result, 3) he recommended a more holistic approach like that taken in Coventry, Ct. where,

he said, the entire watershed and the development potential for each lot was considered and then capped. In Coventry a property owner may develop as he wants as long as he stays under the runoff ratio. He noted this is only one approach of many and urged the Commission to conduct a thorough study of other methods before taking any action, 4. the capacity for reviewing work and monitoring/enforcing is needed. He said a binding agreement and a bond must be held by the Town to ensure proper care of the driveway once it is installed. He asked how the Commission could prevent people from paving over their pervious surfaces, 5. he noted that if the surface does not cure properly, its function deteriorates rapidly. He asked what would happen after the normal life of the pervious surface when the property owner has already been granted his increased lot coverage. What would the incentive then be to properly maintain it?

Mr. Owen suggested the Public Hearing be continued to give the Planning and Zoning Commissions the opportunity to meet to discuss this matter. Atty. Kelly objected, saying the Planning Commission should come to its own independent conclusion. Ms. Gager noted this is a significant proposal and the Planning Commission wants to discuss it thoroughly. Mr. Owen said he understood this matter should be discussed only at the Public Hearing and invited the Planning Commission to attend the next session. It was noted public hearings must be concluded within 35 days and it was exactly 35 days to the next Zoning Commission meeting.

MOTION: To continue the public hearing to consider the petition to amend the Washington Zoning Regulations, Sections 11.5.1, 11.5.2, and 21.1.37 Re: Lot Coverage, to Create New Section 11.5.3 Re: Maximum Lot Coverage for Pervious Surfaces, and to Add a Definition in Section 21 for "Pervious Traveled Surfaces" to Monday, June 23, 2008 at 7:30 p.m. in the Land Use Meeting Room, Bryan Memorial Town Hall. By Mr. Owen, seconded by Mrs. Friedman, and passed 5-0.

At 9:59 Mr. Owen continued the hearing to June 23, 2008.

Revision of the Washington Zoning Regulations/Sections 21.1.8, 21.1.9, and 11.7.2.3: Method for Measuring Average Finished and Pre Existing Grade

Mrs. Friedman read the legal notice published in **Voices** on 5/7 and 5/14/08.

Mr. Owen read the list of documents in the file. He read the proposed language and explained that it would provide a second alternate method for measuring average pre existing and average finished grade. He noted that currently the highest and lowest points are averaged and that the proposed method would be to average all points around the perimeter of a structure.

Mr. Ajello noted that averaging all the points was a more accurate method.

Mrs. Friedman said that it was unlikely an applicant would choose to use the proposed alternate method unless he would benefit. She asked how much additional height the proposed method would allow. She also noted that Mr. McGuinness of the NW Ct. Council of Governments had written that it was unusual to have regulations where the applicant chooses the method of measurement.

Mr. Ajello briefly described situations when the averaging of the highest and lowest points did not represent a true average. He also noted that if the regulation was amended to require the averaging of all points, it would be more expensive for the applicant because many property owners would have to hire a professional to do it.

Mr. Owens, architect, explained that conventionally the average height measurement had been computed differently for many years, but had been recently revised, based in part on recommendations from the Conservation Commission. The result, he said, was that a traditional two story house with a conventional roof line would not comply with the height requirement if it had a walk out basement.

Mrs. Frank, Conservation Commission, stated that Conservation had been concerned about the height of structures on ridgelines and had asked that the regulation be revised to require that measurements be taken from the existing grade prior to the start of any construction. Mr. Owens noted that under the proposed alternative method of measurement, the measurements would still be taken from the undisturbed grade; that would not change. Mrs. Frank said that the Conservation Commission thought the proposed revision was "fine" and that the goal was to keep roof lines hidden in the tree lines.

Mr. Solley, Selectman, stated that he thought giving applicants a choice of the method of measurement was a bad idea. Mrs. Friedman agreed.

Mr. Owens thought that if the Commission was going to offer only one method of measurement, it should choose the more accurate method and the one that would be more representative of the actual site and building

Mrs. Friedman asked how other towns measure height. Mr. Ajello guessed that they do not look for as accurate a measurement as Washington does.

Mr. Shapiro asked if requiring the more accurate method would be a greater cost to the property owner. Mr. Ajello said, yes, because it could require professional help.

Mr. Owens said that the proposed method existed for years before the regulation was last amended and said the current method was over simplified.

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

MOTION: To close the public hearing to consider revisions to the Washington Zoning Regulations Sections 21.1.8, 21.1.9, and 11.7.2.3 Re: Method for Measuring Average Finished and Pre Existing Grade. By Mr. Owen, seconded by Mr. Wyant, and passed 5-0.

Mr. Owen closed the Public Hearing at 10:18 p.m.

Reynolds/44 West Shore Road/Special Permit: Section 6.6.12/Dock

Mrs. Friedman read the legal notice published in **Voices** on 5/7 and 5/14/08.

Mr. Owen read the list of documents in the file and the 4/28/08 ZEO Report, which stated that the dock had been approved by the Lake Waramaug Authority.

Mr. Ajello explained that the existing dock is off center, but the proposed replacement would be in the middle of the existing concrete pier.

He noted that the square footage of the proposed dock was less than the maximum permitted.

There were no questions or comments from the public.

MOTION: To close the public hearing to consider the Special Permit application: Section 6.6.12 submitted by Mr. Reynolds for a Dock at 44 West Shore Road. By Mr. Owen, seconded by Mr. Fitzherbert, and passed 5-0.

Mr. Owen closed the Public Hearing at 10:23 p.m.

REGULAR MEETING

Mr. Owen called the Meeting to order at 10:24 p.m. and noted he had already seated Members Averill, Fitzherbert, Friedman, and Owen and Alternate Wyant.

Consideration of the Minutes

MOTION: To accept the 4/28/08 Public Hearing - Regular Meeting minutes as written. By Mrs. Friedman, seconded by Mr. Averill, passed 5-0.

Pending Applications

Reynolds/44 West Shore Road/Special Permit: Section 6.6.12/Dock

MOTION: To approve the Special Permit application: Section 6.6.12 submitted by Mr. Reynolds for a dock at 44 West Shore Road. By Mr. Owen, seconded by Mr. Fitzherbert, and passed 5-0.

New Applications

Bixler/49 Ferry Bridge Road/Special Permit: Section 13.11/ Detached Accessory Apartment

Mr. Owen read the 5/19/08 ZEO Report, which noted that the Health Department had not yet approved the application, a side yard setback variance was required, and that the applicant had asked that a Public Hearing be scheduled for June 23.

The application proposed demolition of the existing barn, its reconstruction in a slightly different configuration and location, and conversion to a detached accessory apartment.

Mr. Ajello briefly explained that because this was an interior lot with less than 200 ft. of frontage, the increased setbacks for interior lots applied. The definitions of "lot width" and "frontage" were read and discussed.

Mr. Owens, architect, argued that Section 17.2 provided relief for lot width and he read this section to the Commission. He said it stated that

non conforming lots are entitled to single family dwellings and customary accessory structures even though they don't meet the requirement for lot width. Mr. Owen, Mr. Owens, and Mr. Ajello discussed the details regarding setback, frontage and lot width requirements. Mr. Owen and Mr. Ajello did not agree with Mr. Owens' interpretation of Section 17.2. Mrs. Hill stated that she had discussed this matter with Mr. Ajello and agreed with his decision that a variance was required.

The map, "49 Ferry Bridge Road," by Halper Owens Architects, dated 5/15/08 and based on a survey by Mr. Alex, was reviewed.

Mr. Owen advised Mr. Owens that either a variance was required for the side yard setback or the building could be moved to the rear portion of the lot where it would comply with the Regulations.

Although Health Department approval and a variance were still needed, it was the consensus of the commissioners to schedule a Public Hearing as the applicant had requested.

MOTION: To schedule a public hearing on June 23, 2008 to consider the Special Permit application: Section 13.11.3 submitted by Mr. Bixler for a detached accessory apartment at 49 Ferry Bridge Road. By Mr. Owen, seconded by Mr. Averill, and passed 5-0.

Wykeham Rise, LLC./101 Wykeham Rd./Special Permit: Sections 13.9, 4.4.1/Inn:

Mr. Owen read the 5/19/08 ZEO Report, which stated the Health Department had not yet approved the application, a lot coverage variance was required, but not yet granted, the Inland Wetlands Commission had not yet received an application, and that the applicant had asked that the Public Hearing be scheduled for the July meeting. Atty. Fisher briefly explained the Special Permit application was to convert the Wykeham Rise property to an inn. The alternative, he said, would be an affordable housing project, but added that the Zoning Commission had told him that concept would not be well received. Mrs. Friedman clarified that Atty. Fisher had asked if the affordable housing units could be located off the property elsewhere in Town and that is what the Commission had objected to. Mr. Owen stated that the Zoning Commission supports "affordable housing." Atty. Fisher said the proposed inn would have few of the problems associated with affordable housing and would be good for the neighborhood. Mr. Klauer, property owner introduced himself and said he intended to operate a LEED certified, environmentally friendly inn. Mr. Szymanski, engineer, presented the map, "Site Development Plan for Wykeham Rise", by Arthur H. Howland & Assoc., dated 5/7/08. He pointed out the location of the property and the existing septic system, which had been approved by the DEP. He said the inn would be serviced by the Judea Water Company public water supply and that the state's 2004 Erosion Control Guidelines would be adhered to. He also stated that the proposed improvements would be farther from the brook and wetlands than the existing buildings are. He pointed out the main building, spa, and individual one and four bedroom cabins and noted landscaping was proposed to provide a buffer from the roads and nearby properties. Mr. Szymanski said he understood the Town would send the plans to Land Tech for review. Atty. Fisher stated that he would provide additional information to residents upon request.

Other Business

Revision of the Washington Zoning Regulations/Section 13.11.1: Accessory Apartments: It was noted that the Public Hearing had been closed and that the public and Town officials had spoken against the proposed amendment.

MOTION: To withdraw the Zoning Commission's proposed amendments to Section 13.11.1 of the Washington Zoning Regulations Re: Accessory Apartments. By Mr. Averill, seconded by Mr. Wyant, and passed 5-0.

Revision of the Washington Zoning Regulations/Section 13.9/Tourist Home or Inn: Mrs. Friedman remarked that the Commission had begun work on this amendment months ago and she saw no reason to delay action.

MOTION: To approve the proposed revision to Section 13.9: Tourist Home or Inn to require frontage on state highways. By Mrs. Friedman, seconded by Mr. Averill.

Mr. Shapiro asked if the Commission should go on record to state that this is a clarification of what it had understood its interpretation was. Mr. Owen said the Commission had proposed a revision of its Regulations and there was no need to call it anything other than that. Mr. Ajello noted that the legal notice had referred to it as a clarification. Mr. Owen again explained the reason for the proposed revision; to change the wording of the regulation because it was clear there had been a difference in its interpretation. Mr. Ajello worried that since "clarification" had been referenced in the legal notice that this could have legal ramifications. There was a brief discussion about the correct terminology. Mrs. Friedman considered the revision to be a clarification. Mr. Ajello suggested it was an amendment, but Owen did not think that was the appropriate term. Mr. Ajello thought Atty. Zizka should be consulted about whether it was OK to notice a proposed revision as a clarification, but to approve it as an amendment. (Note: The legal notice published on 5/7 and 5/14/08 listed the proposal as both a "revision" and a "clarification.") Mrs. Friedman withdrew the motion and Mr. Averill withdrew his second. Mr. Owen will discuss the matter with Atty. Zizka prior to the next meeting.

Revision of the Washington Zoning Regulations/Sections 12.15.4 and 12.15.9/Outdoor Lighting in Residential Districts: It was noted that the Public Hearing had been closed and that the commissioners were comfortable with the proposed revisions. The one change made to the proposed language was the deletion of the phrase, "or because it helps criminals" in Section 12.15.9.

MOTION: To approve revisions to the Washington Zoning Regulations Sections 12.15.4 and 12.15.9 Re: Outdoor Lighting in Residential Districts as amended at the 5/19/08 Zoning meeting to prohibit light fixtures in trees or other vegetation and to clarify the non binding recommendations. By Mr. Owen, seconded by Mrs. Friedman, and passed 5-0.

Revision of the Washington Zoning Regulations/Sections 12.14, 12.14.3, and 12.14.5: Generators, Pool Filters, and Noise Generating Equipment, Possible Revisions to Section 16: Business Signs in Residential Districts, Possible Regulations to Govern Outdoor Commercial Lighting, and Possible Regulations re: Preservation of Stonewalls:

Due to the late hour, these matters were not discussed.

Petition to Amend Washington Zoning Regulations/Sections 11.5.1, 11.5.2, and 21.1.37/Lot Coverage and to Create New Section 11.5.3/Maximum Lot Coverage for Pervious Surfaces, and Add Definition in Section 21 for "Pervious Traveled Surfaces": It was noted the Public Hearing was continued to June 23, 2008.

Revision of the Washington Zoning Regulations/Sections 21.1.8, 21.1.9, and 11.7.2.3: Method for Measuring Average Finished and

Pre Existing Grade: Mrs. Friedman again stated that she was against giving the applicant the choice of the method of measurement. Mr. Owen asked how this section had previously been worded. Mr. Ajello responded that it had been deficient because it had not required that the measurements be taken from the pre existing grade. He thought either method was acceptable, but the proposed alternative was more accurate. Mr. Owen had no problem with the proposed revision if the ZEO had no problem with it. Mr. Fitzherbert and Mr. Averill thought both methods were OK. Mrs. Friedman and Mr. Wyant thought the Commission should specify either one or the other method was required. Mr. Shapiro noted the proposed method was more accurate.

MOTION: To approve revisions to the Washington Zoning Regulations Sections 21.1.8, 21.1.9, and 11.7.2.3 Re: Method for Measuring Average Finished and Pre Existing Grade to allow an alternate method of measurement. By Mr. Owen, seconded by Mr. Fitzherbert, and passed 4-1. Mrs. Friedman voted No because she did not think a choice should be given.

Privilege of the Floor

Mr. Charles said he had been involved with the creation of the Bixler lot on Ferry Bridge Road and at the time, the Zoning Commission had considered it an interior lot. He was not sure, however, whether at that time Zoning had considered the setbacks for the existing buildings.

Enforcement

Mr. Ajello reported on the progress he was making with the removal of signs at 210 New Milford Turnpike. Photos were circulated.

Mr. Ajello said he had not yet discussed the lighted sign on River Road with the owner of Washington Pizza.

Mr. Ajello also noted that he had discussed the CL&P lights in Marbledale with the Selectmen, but it was not yet known how the Town would proceed to attempt to get CL&P to make improvements.

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

FILED SUBJECT TO APPROVAL

Respectfully submitted,

Janet M. Hill

Land Use Coordinator