

May 22, 2006

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

ALTERNATES PRESENT: Mr. Abella, Mr. Shapiro

ALTERNATE ABSENT: Mr. Wyant

STAFF PRESENT: Mr. Ajello, Mrs. Hill

ALSO PRESENT: Mr. Charles, Mr. Verrastro, Mr. Frank, Mr. Sears, Mrs. McDonald, Ms. Oetjen, Mrs. Buziak, Mr. Collum, Mr. Carey, Mr. Reid, Mrs. Condon, Mrs. Middlebrook, Mr. Sedito, Mr. Catlin, Mrs. Andersen, Mr. White, Mr. Lasar, Press

PUBLIC HEARINGS

Revisions to the Washington Zoning Regulations-Sections 13.17.4 and 15: Parking and Sections 11.5.1, 11/5/2, 7.5, 7.6, 8.6.6, and 8.7.6: Setbacks and Coverage in the New Preston and Washington Depot Business Districts

Mr. Owen called the public hearing to order at 7:32 p.m. and seated Members Averill, Friedman, Fitzherbert, Martin, and Owen. Mrs. Friedman read the legal notice published in the **WaterburyRepublican** on 5/10 and 5/18/06.

Mr. Owen noted all the documents in the file. He read the staff comments from the 4/26/06 memo from the NW Ct. Council of Governments, the 4/17/06 memo from the Housatonic Valley Council of Elected Officials, and the 5/1/06 memo the Litchfield Hills Council of Elected Officials and the 5/2/06 motion of approval by the Washington Planning Commission.

Mr. Owen summarized the revisions in the latest draft dated 5/22/06 (attached).

Mr. Owen briefly explained the rationale behind the proposed revisions, saying under the current Zoning Regulations neither the New Preston nor the Washington Depot Business District could be rebuilt as it exists. He said the proposed revisions were an attempt to make the Regulations reflect these two historic districts and to allow any new development within them to be consistent with what already exists in each. The revisions would permit the Commission to consider minimum parking requirements rather than the maximum/worst case scenario requirements, which are now in effect. He noted the revised Regs would give the Commission flexibility to determine parking, setback, and coverage requirements to permit new construction more like the charming development that is already here. Route 7 sprawl, he said, was the result of modern zoning regulations such as Washington's.

Mr. Shapiro asked if the proposed revisions were temporary. Mr. Owen responded that originally the Commission had discussed temporary regulations, but on the advice of counsel, had abandoned that idea. The current proposal had evolved from that one.

Mr. Carey read proposed Section 8.5 and asked for the definition of coverage. Mr. Owen noted the definition was included in Section 21 and included paved and traveled surfaces in addition to building footprints. He pointed out that most of the business properties in New Preston and the Depot were well over the 25% maximum coverage currently permitted. Mr. Martin read the definition, noting it had been a cooperative effort by the Zoning Commission and ZBA and would not change under the current proposal.

Mrs. Andersen asked why the revisions were proposed. She feared the changes in the parking and coverage requirements would result in large chain stores such as CVS and Friendly's coming into Town because business owners could argue that 100% coverage and off site shared parking were permitted. She said future Zoning Commissions might interpret the Regulations differently and allow larger or national chains.

Mr. White, Chairman ZBA, voiced his concern about the scope of the proposed revisions. He said the current Regulations were tight with adequate checks and balances. He preferred to handle development in these two districts by other means, possibly by Special Exception, which would not require proof of hardship. He thought under the proposed revisions, applicants would be more likely to apply for 100% coverage and it would be difficult for the Commission to negotiate with them. He thought development should be considered on each property rather than for an entire district because the implications of the revisions were not known.

Mr. Owen stated the draft revisions had been created with the help of the Commission's attorney who had advised it that although there were other procedures that could be implemented, this was the best way to move forward.

Mr. Martin read proposed Section 7.5, noting that although it states the Commission may approve 100% coverage under specific circumstances, the starting point would still be 25%. Mr. Owen agreed. He said the decision about how much coverage would be permitted would not be arbitrary and he reviewed the standards that would ensure development would be in keeping with what exists in the Depot.

Mrs. Andersen suggested the Commission "beef up" the language in Section 8.4, perhaps by adding a provision regarding maximum square footage of buildings.

Mr. Charles said his main concern was whether the revised regs were the correct method to reach the Commission's goal of permitting development that is consistent with what already exists in the two business districts. He said the possibility of the elimination of setbacks and 100% coverage was a dramatic increase over the current Regulations and he asked if a build-out had been done. He noted he was the only Planning commissioner who had voted against the revisions because the Planning Commission had promised there would be public discussions before the Zoning Commission implemented any changes and this had not yet happened. He noted Zoning had not contacted any planning consultants to review the proposal, which he thought would be wise to do so that any unanticipated implications would be known. In addition, he did not think due diligence had been done because septic and traffic studies had not been undertaken.

Mr. Fitzherbert noted that the Zoning Commission thought proposed Section 7.5 clearly stated the consideration of coverage would begin at 25% and could increase only if all of the specifications listed were met and proof was presented that the proposed development would be consistent with the surrounding neighborhood.

Mrs. Andersen asked about "grandfathered" buildings. Mr. Owen noted that the Town thinks the current Regulations protect the non

conforming buildings it has, but they actually don't. He said "grandfathering" preserves what is already here, but does not address changes to what exists or new development. Mr. Martin agreed, explaining that "grandfathering" puts significant constraints on changes to existing buildings and adaptations for current needs. He said the proposed revisions would provide flexibility to meet the needs of the business community that "grandfathering" could not provide.

Mr. Boling thought the proposed revisions were a positive step in the right direction. Although he thought it would be good to beef up the standards, he thought the proposal would give the Commission discretion in dealing with applications and would not "open doors" for developers. He suggested the standards include references to the Town Plan of Conservation and Development, the Depot Study, and historic, non suburban, rural character. Mr. Owen noted there had been a reference to the Plan in an earlier draft, but Atty. Zizka had advised the Commission to delete it. However, he agreed more descriptive language for specific standards could be included and the other commissioners agreed.

Mr. White again stated that since it would be unlikely that any future applicant would be able to prove a hardship associated with his property, he recommended that the establishment of the Special Exception procedure, which would focus on individual properties. He was concerned the revisions might not have "enough teeth" to stop development not in keeping with what exists in the districts if an appeal was brought to court. He thought the current system in Washington worked well and that more review of the proposed language was needed.

Mr. Owen responded the problem was not lot based, but was district-wide and was a developing issue as the Depot study progressed. He stressed that the most cherished structures in the New Preston and Depot business districts were now impossible to build under the current Regs and that once implemented, the revisions would make them conforming so they could be duplicated.

Mrs. Busiak, Marbledale resident, complained the Commission ignored Marbledale, which had the same problems as New Preston and the Depot. She said these included parking, traffic, coverage, and incompatible businesses.

Mr. Martin noted the Zoning Commission had been concerned about Marbledale and so had already revised its Regulations to allow the same type of development as was now being considered for New Preston and the Depot. He said Marbledale had not been deprioritized; that, in fact, these concepts had been implemented there first. Mr. Owen noted, too, that Marbledale differed greatly from New Preston and the Depot and so some of the proposed revisions would not be easily adaptable there.

Mr. Boling stated 100% lot coverage would be appropriate, even desirable, on some properties in New Preston and the Depot because it was consistent with what was already there.

Mr. Carey thought the proposed revisions did not address septic requirements, saying due to septic concerns, it would be nave to permit 100% coverage. Mr. Owen explained that septic system requirements were governed by the Health Dept. Mrs. Hill noted the application process would not change; all zoning applications would first have to be approved by the Health Dept. before action by the Zoning Commission was taken.

Mr. Verrastro asked for a concrete example of how the parking allocation would work under the proposed revisions; how many spaces an 8000 sq. ft. mixed use commercial building would require. Mr. Owen noted the reason for the proposed change in the parking regulations

was that none of the businesses in New Preston or the Depot could meet them because they are unrealistic. He said they resulted in large empty paved lots such as the one on Rt. 47 for Jack's. The table on page 5 of the proposed revisions indicated 8 to 24 spaces would be required for an 8000 sq. ft. retail business. Mr. Verrastro asked if handicapped spaces were required. Mrs. Hill said that was a Building Code issue.

Mr. Sears noted there is a common perception the Depot does not have enough parking spaces, but he thought the real issue was the utilization of the existing spaces. He thought there should be a carefully thought out off site parking plan for the Depot.

Mr. Fitzherbert pointed out that under the existing Regulations the Commission had no jurisdiction over what a building will look like, but under the proposed regs it would, in so far as it would have to be consistent with the surrounding neighborhood. He noted that applications proposing parking in the rear of commercial properties, architecture in keeping with the neighborhood, etc. would qualify for decreases in the setback requirements and increases in coverage. Mr. Owen noted the Commission would take into account building size, spacing, and proportion rather than specific architectural details.

Mrs. Andersen suggested the hearing be continued. She thought a parking study should be undertaken and the Depot study completed and approved at a Town Meeting before the Zoning Regulations were revised. She recommended in the interim that applications for new development in the two business districts be processed by the ZBA. Mr. Owen responded that there is currently no such procedure for applying to the ZBA and he pointed out that per the state statutes zoning boards of appeals have very specific powers.

Mr. Sedito, ZBA, thought the revisions were very broad and that a Town Meeting should be required to approve them. He said the Zoning Commission was trying to implement the Depot study without townwide discussion. Mr. Owen responded it was not the intent of the Zoning Commission to implement the Depot study.

Mr. Martin pointed out that several people had spoken about what a large change the revisions would be, when in fact, he said, if what the revisions would allow was compared with what already exists in these two districts, there would not be much of a change. He said the revisions would only ratify what exists. Mrs. Friedman said that many of the properties do not presently have structures that dominate the site and that a new building with a reduced setback might appear to be a major change. She thought the request for a build out was a valid one and said she wanted to study this matter before voting. Mr. Owen thought the map in Phase I of the Depot study would be close to a build out of the Depot.

Mr. Fitzherbert noted the proposed revisions say the Commission "may" approve decreases in setbacks and increases in coverage, not that it shall approve them, and it would do so only if all of the requirements were met. He said it was wrong to assume 100% of every property would be covered.

Mr. Catlin, ZBA, noted the Town already had a board to deal with variances and asked why the process had to be changed. He said the ZBA was experienced and already had an established process. He did not think this should be changed to enable developers to build to the maximum, which he said would be applied for rather than minor changes.

Mr. Abella agreed with Mrs. Friedman's comments above and said he wanted to be sure the Commission would be in a defensible position if

its decisions were appealed.

Mr. Shapiro thought the proposed language included protection against many of the concerns raised by the public at the hearing, that the revisions would permit the Commission to exercise discretion, and that the proposal clearly cited the surrounding factors that would prevent excesses in that the Commission would have to be satisfied that all of the specifications were met before approving each application. Mr. Owen agreed, saying it would not be easy for an applicant to meet all of the specifications listed and that each proposal would have to fit into the existing context. He again stated the current Regulations provide the Town with a false sense of security as they require development totally inconsistent with what already exists. In response to the fears raised about the possibility of permitting coverage "up to 100%," Mr. Shapiro suggested amending that language to "to exceed 25%." It was the consensus to make this change throughout the text.

Mr. Averill stated he was comfortable with the proposed revisions and was ready to vote on them.

Mr. Martin said he was comfortable with the proposed revisions, but would be willing to insert additional specific language concerning the specifications that would have to be met in order for the Commission to approve decreases in setbacks and increases in coverage. He thought this would be a worthwhile improvement and that the hearing should be continued for the purpose of editing the text.

MOTION: To continue the public hearing to consider revisions to the Washington Zoning Regulations concerning parking and setbacks and coverage in the New Preston and Washington Depot Business Districts to Monday, June 26, 2006 at 7:30 p.m. in the Land Use Meeting Room, Bryan Memorial Town Hall. By Mrs. Friedman, seconded by Mr. Fitzherbert, and passed 5-0.

At 9:15 p.m. Mr. Owen continued the public hearing to June 26, 2006.

Collum/70 Bee Brook Road/Special Permit: Section 13.13/Housing in the Business District/Con't.

Mr. Owen reconvened the public hearing at 9:16 p.m. Mrs. Hill noted it had been continued because there had been no Health Department approval and the applicant had not notified his adjoining property owners of the hearing by certified mail, but noted both requirements had now been met.

Mr. Owen reviewed the 5/22/06 ZEO Report. Mr. Ajello said all of the requirements had been addressed.

Mr. Collum stated the apartment currently exists, but that he had to reapply for it due to a technicality in the Regulations.

No one from the public spoke and none of the commissioners had any questions or comments.

MOTION: To close the public hearing to consider the Special Permit application: Section 13.13 submitted by Mr. Collum for housing in the business district at 70 Bee Brook Road. By Mr. Martin, seconded by Mrs. Friedman, and passed 5-0.

Mr. Owen closed the public hearing at 9:19 p.m.

Ingrassia/135 East Shore Road/Special Permit: 6.4.6/Fence on the Lake Waramaug Side of E. Shore Rd./Con't.

Mr. Owen reconvened the hearing at 9:20 p.m.

Mr. Ajello showed photos of the height of the proposed fence and it was noted most of the commissioners had driven by the property to view it. Mr. Ajello noted his photos had been taken from his vehicle and showed the top of the fence would intersect the view of the water.

Mr. Owen advised the commissioners the regulation states a fence shall not unduly obscure the view of the lake. He noted it would obviously obscure some of the view and said it would be up to the Commission to interpret what "unduly" meant. He did note, however, that in this case the dwelling was very close to the road and there were no houses directly across the highway.

Mrs. Friedman thought the top of the fence bisecting the water interfered with the view from the road and noted the proposed fence was an enormous span that ran more than just the length of the house. She supported the idea that a higher fence be approved along the length of the house, but that it be lower elsewhere on the property.

Mr. Martin compared the proposed fence with the Madoff fence previously approved by the Commission. The Madoff fence had been mostly aligned with the house and had been noticeably high at 42".

Mr. Ajello agreed the Madoff fence was high and pointed out it was lower in elevation compared to the water level than was the proposed Ingrassia fence. Mr. Martin suggested the house could be protected by a 36" high fence that would not interfere so much with the view.

Mr. Frank, Lake Waramaug Assoc., asked the Commission to consider the height of the fence from both a pedestrian and biker's perspective as well. Mr. Ajello noted these were both a higher perspective than when looking from the seat of a car.

Mr. Martin suggested a 42" high fence be approved as proposed along the length of the house and extending only 25 feet on each side, north and south, of the house. This would protect the privacy of the house and protect it from the road, while preserving the public view from the road. It was the consensus this was a good idea.

MOTION: To close the public hearing to consider the Special Permit application: Section 6.4.6 submitted by Mrs. Ingrassia for a fence on the Lake Waramaug side of East Shore Road at 135 East Shore Road. By Mrs. Friedman, seconded by Mr. Fitzherbert, and passed 5-0.

Mr. Owen closed the public hearing.

These public hearings were recorded on tape. The tape is on file in the Land Use Office, Bryan Memorial Town Hall, Washington Depot, Ct.

REGULAR MEETING

Mr. Owen called the meeting to order and seated Members Averill, Friedman, Fitzherbert, Martin, and Owen.

Consideration of the Minutes

Regarding the 4/18/06 Special Meeting minutes, Mr. Martin noted the motion of approval for the Myfield affordable housing application did

not include the condition that the owner must gain state certification and maintain it. He asked if that had been the intent and understanding of the Commission, and whether it had not been included in the motion because the Commission had considered that it was implicitly included in the application. Mr. Owen said per the plan approved the owner had to report to the Commission once a year to confirm he had maintained state certification. It was the consensus this was, indeed, the intent of the Commission. Approval of the 4/18/06 minutes was postponed to the next meeting.

MOTION: To accept the 4/24/06 Public Hearing -Regular Meeting minutes as written. By Mr. Martin, seconded by Mr. Owen, and passed 5-0.

Ingrassia/135 East Shore Road/Special Permit: Section 6.4.6/Fence on Lake Waramaug Side of East Shore Road: It was the consensus to approve the fence with the restrictions discussed at the public hearing.

MOTION: To approve the Special Permit application: Section 6.4.6 submitted by Mrs. Ingrassia for a fence on the Lake Waramaug side of East Shore Road at 135 East Shore Road subject to the following condition: the 42 inch tall fence is approved along the front of the house and may extend no farther than 25 ft. beyond the house on either side, north and south, of the house and with the understanding that the applicant may apply for a zoning permit for a 2 ft. tall fence for the remainder of the linear length she desires and that the standard measurement shall be taken from the crown of the road to the top of the fence to measure the height of the fence. By Mr. Martin, seconded by Mrs. Friedman, and passed 5-0.

Collum/70 Bee Brook Road/Special Permit: Section 13.13/Housing in the Business District: It was noted there were no outstanding issues.

MOTION: To approve the Special Permit application: Section 13.13 submitted by Mr. Collum for housing in the business district at 70 Bee Brook Road. By Mr. Martin, seconded by Mrs. Friedman, and passed 5-0.

New Applications

Reid/287 New Milford Turnpike/Special Permit: Section 9.4.1/ Small Scale Business Establishment: Mr. Ajello explained the applicant proposed to add a second business in the existing building, increase the signage, and bump out two display windows. There would be no other change to the footprint. Mrs. Friedman noted there is significant parking on site. The site plan, "Parking Plan," dated 5/22/06 was reviewed. A public hearing was scheduled for Monday, June 26, 2006 at 7:30 p.m. in the Land Use Meeting Room, Bryan Memorial Town Hall, Washington Depot, Ct.

Wodtke/155 West Shore Road/Special Permit: Section 6.6.12/Dock:

Mr. Ajello read Section 6.6.12 and noted the reason for the Special Permit application was that the entire length of shoreline was only 40 feet so the dock could not meet the side yard setback requirements. A public hearing was scheduled for Monday, June 26, 2006 in the Land Use Meeting Room, Bryan Memorial Town Hall. The hearings begin at 7:30 p.m.; this will be the second hearing.

Other Business

Organization/Administration: Mr. Owen noted the weakness of the Zoning Commission has been enforcement. He explained several changes that would be implemented to improve enforcement efforts: 1) A significant increase in the budget had been approved to increase the hours for the Enforcement Officer and hire a part time receptionist/clerk. 2) Work to revise the application forms will be resumed. Clearer, more detailed, application forms will improve compliance and provide applicants with a better understanding of what is required. Mr. Owen hoped to have the improved forms available on line and said when implemented, they would help to free up staff time. 3) Mr. Owen suggested the Town adopt a Citation Ordinance similar to the one the Inland Wetlands Commission uses. It would enable the enforcement officer to impose fines for violations. He explained the state statutes permit fines of up to \$150 per day, which would get the attention of violators and provide the Commission with an additional enforcement tool. He had discussed the citation ordinance with Atty. Zizka who had suggested if the Commission were to vote to levy a fine on an individual, it would prevent violators from attempting to sue the enforcement officer for treble damages. Mr. Shapiro will consult with Atty. Zizka and will prepare draft language for the ordinance.

Revision of the Zoning Regulations: It was noted Mr. Owen would revise the May 22, 2006 draft as had been discussed at the public hearing. Mr. Martin noted the current Section 13.1.B already contained language that development must be consistent with the surrounding neighborhood.

Enforcement

- 1) Mr. Ajello will write another letter to the New Preston real estate company with the back lit sign, although Mr. Averill said he had not noticed it had been turned on lately.
- 2) Mr. Ajello reported the state DOT has contacted Mr. Bolek and asked him to locate his fence on East Shore Road behind his property line.
- 3) Mr. Frank discussed the Commission's intent when it revised the dock regulations. He noted the Commission had intended that docks and rowing shell docks would be separate and that the maximum dock size was 360 sq. ft. The commissioners agreed this was their intent. Mr. Owen stated you could not expand a dock by adding another dock to it.
- 4) Mr. Ajello had contacted the Tulip Tree owners about the sign that was erected without a permit. He noted the owners have a contract with the state to place the sign in the state right of way.

It was noted neither Mr. Owen nor Mr. Fitzherbert would attend the next meeting. Mrs. Friedman will serve as chair.

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

Mr. Owen adjourned the meeting at 10:25 p.m.

FILED SUBJECT TO APPROVAL

Respectfully submitted,

Land Use Coordinator