

June 25, 2007

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

ALTERNATE PRESENT: Mr. Shapiro

ALTERNATE Absent: Mr. Wyant

STAFF PRESENT: Mr. Ajello, Mrs. Hill

ALSO PRESENT: Mr. McTiernan, Mr. Lasar, Atty. Kelly, Mr. Boling, Mr. Gitterman, Atty. Ebersol, Mr. Charles

PUBLIC HEARING

McTiernan/52 Calhoun Street/Special Permit: Section 13.11.3/ Detached Accessory Apartment/Con't.

Mr. Owen reconvened the public hearing at 7:30 p.m. and seated Members Abella, Averill, Fitzherbert, Friedman, and Owen. He read the list of documents that had been submitted since the last meeting and the 6/25/07 ZEO Report.

Mr. Lasar, architect, presented the site plan revised to 6/11/07 and reviewed his calculation sheet comparing the volume and square footage of the existing house and proposed apartment. He pointed out that the total ground floor area of the accessory apartment would be 20 sq. ft. less than 75% of the ground floor area of the house.

Mrs. Friedman asked for the difference in size of the livable areas of the units. Mr. Lasar said the house had 1288 sq. ft. and the apartment had 1198 sq. ft.

Mr. Lasar stated the requirement was that the accessory building not exceed 75% of the ground floor area and volume of the house (Section 12.5.2). Mr. Owen said the 75% requirement referred to accessory structures, not accessory apartments and it was not clear that that was the only standard that applied. Mrs. Friedman referred to Section 13.11.3.g, which states that the apartment must be "clearly subordinate" to the principal dwelling. Mr. Owen read the entire Section 13.11.3.g.

Mr. Lasar presented photos to show that the apartment was clearly subordinate, stressing that it could not be seen from the house. Mr. Owen noted that subordination was the issue and visibility was not relevant.

The floor plans of the dwelling and apartment were reviewed. It was noted that the garage and deck were included in the total sq. footage of the house.

Mr. Fitzherbert suggested that the Commission look at the scale and appearance of the proposed apartment to determine whether it met the intent of the Regulations. Mr. Owen stated that the intent was for a more significant difference in size between the apartment and the

principal dwelling and that the Commission had not anticipated such a small principal dwelling.

Mrs. Friedman pointed out that it was possible for a detached apartment to comply with Section 12.5.2, but not be subordinate to the main dwelling and she said the apartment must comply with both. Mr. Owen agreed that there were more restrictive requirements for accessory apartments than for accessory structures.

Mrs. Friedman noted the habitable spaces of the house and proposed apartment were virtually identical. Mr. Lasar argued that the Regulations do not refer to habitable space. Mr. Ajello advised the Commission that they refer to size, scale, volume, and footprint. Mrs. Friedman noted that while the proposed screened porch was not habitable area, it did add to the scale of the building and significantly increased its size. Mr. Averill noted the regulation required the apartment to be clearly subordinate in size and scale to the principal dwelling, and so he agreed this was a concern.

Mr. Ajello thought the scale of the apartment was less because it was located so far from the house, but Mr. Owen did not agree that scale referred to location. Mr. Shapiro said the term, scale, referred to the relationship between the two structures.

Mr. McTiernan stated he had no close neighbors because Steep Rock has the land surrounding his property. He noted that if his dwelling were larger, he would have no problem applying for the apartment, but said he was satisfied with the size of his house and did not want to have to add onto it. He also noted the apartment could not be seen from off site. Mr. Owen noted the Regulations apply whether the building can be seen or not.

Mrs. Friedman asked how important the screened porch was to the application. The applicant did not respond.

Mr. Shapiro asked what the difference in height between the two buildings was. The elevations were reviewed. The peak of the apartment's hip roof was 13.5 feet and the peak of the house's gable roof was 18 ft.

Mr. Owen noted the size of the proposed apartment was reasonable, but the question was the ratio between the size of the apartment and the house. He said a maximum sized apartment was proposed for such a small house.

There were no other questions from the commissioners or from the public.

MOTION: To close the public hearing to consider the Special Permit application: Section 13.11.3 submitted by Mr. McTiernan for a detached accessory apartment at 52 Calhoun Street. By Mr. Owen, seconded by Mr. Fitzherbert, and passed 5-0.

Mr. Owen closed the public hearing at 8:02 p.m.

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

REGULAR MEETING

Mr. Owen called the Meeting to order at 8:03 p.m. and seated Members Abella, Averill, Fitzherbert, Friedman, and Owen.

Consideration of the Minutes

MOTION: To accept the 5/21/07 Public Hearing - Regular Meeting minutes as written. By Mrs. Friedman, seconded by Mr. Averill, passed 5-0.

Pending Application

McTiernan/52 Calhoun Street/Special Permit: Section 13.11.3/ Detached Accessory Apartment: Mr. Owen thought it would be difficult to defend a denial and suggested the Regulations be revised. Mr. Fitzhebert said the Commission had not anticipated such a small main house when the Regulation had been written. Mr. Shapiro had no problem with approval because he thought the apartment was both smaller than and subordinate to the house. Mr. Averill did not think Mr. McTiernan should have to add onto his small house in order to have the apartment approved. Mr. Shapiro noted he could propose a smaller apartment. Mrs. Friedman did not think the apartment was "clearly" subordinate to the main house. She noted applicants usually apply for the maximum size allowed, but said the Commission was not required to approve the maximum size. Mr. Abella thought the proposed screened porch made it more difficult to approve the apartment. Mrs. Friedman agreed.

MOTION: To approve the Special Permit application: Section 13.11.3 submitted by Mr. McTiernan for a detached accessory apartment at 52 Calhoun Street. By Mr. Fitzherbert, seconded by Mr. Owen, and passed 4-1. Mrs. Friedman voted No because she did not think the proposed apartment was clearly subordinate and clearly smaller in size and scale than the principal dwelling per Section 13.11.3.h.

New Applications

Henisz/52 West Church Hill Road/Special Permit: Section 4.4.15/ General Home Occupation/Psychiatrist's Office: Mr. Owen read the 6/25/07 ZEO Report. A public hearing was scheduled at 7:30 p.m. on August 27, 2007 in the Land Use Meeting Room Bryan Memorial Town Hall.

Freer/246 Woodbury Road/Special Permit: Section 13.11.3/Detached Accessory Apartment: Mr. Owen read the 6/25/07 ZEO Report. It was noted a variance was needed because the proposed apartment would not use the same driveway as the main house.

Stitler-Giddens/262 West Shore Road/Special Permit: Section 6.4.9 Boathouse: Mr. Owen read the 6/25/07 ZEO Report, which stated both Inland Wetlands and Health approval were still needed. Mr. Ajello noted that in addition, a variance for front yard setback was required. He added that by state statute if the Inland Wetlands Commission had not approved the application prior to the end of the time period in which Zoning must act, Zoning would have an additional 35 days from the date of the Inland Wetlands approval in which to act.

Other Business

Myfield, LLC./7 Mygatt Road/Request to Amend Original Approval: Representing the owners, Atty. Ebersol said he was sorry that at the public hearing the applicant did not make clear that his intent had always been that the purchasers would customize their units. He agreed with Mr. Owen's 6/7/07 letter that the record makes it sound like all the units would be identical. He said standard units would be sold and

nothing extra installed until the purchaser decides what he wants.

Mrs. Friedman noted the affordable units were required to stay affordable. Atty. Ebersol said the state statute allows the purchaser to recoup the purchase price plus the cost of improvements.

Atty. Ebersol stated the entire economic viability of the project hinged on the ability of the developer to customize to sell what the buyer wants. He said the four affordable units would be sold for \$275,000 to \$350,000 less than the market rate units and the only way to make up the cost was to customize the other units and sell them for more. He noted the Affordable Housing statute says that a Commission may not impose conditions that would threaten the economic viability of the project.

Atty. Ebersol passed out marketing information that he said had been available to the Commission 10 months ago. Mr. Owen disagreed, saying this information was nothing like what the Commission had been told or had received at the hearing. Atty. Ebersol explained that every buyer must purchase the standard model shown on the back of the brochure, but each would have the right to make changes. Mr. Owen noted the approval had been for 13 units, all with the same floor plan.

Mr. Averill said he had understood that after the unit had been sold it could be modified. Atty. Ebersol explained that the modular units are made in a factory so it would make sense to make any changes at the time they are manufactured. Mr. Owen noted he had said the exact opposite during the hearing. Atty. Ebersol again apologized and said he was here to apply for a modification of the original approval.

Atty. Ebersol briefly described the various amenities packages and price list. He said, however, that a buyer did not have to purchase any of the amenities.

Mr. Shapiro noted the original proposed standard unit had been 1904 sq. ft. and the fully finished Berkshire unit would be 2700 sq. ft.

Atty. Ebersol did not understand why the amenities could be installed only after the purchase. To install them beforehand at the request of the purchaser made the project economically viable. Mr. Shapiro and Mr. Fitzherbert asked, if all of the purchasers of the 9 market rate units wanted the standard unit only with no upgrades, then the project would not be economically feasible? Atty. Ebersol confirmed this was so. Mrs. Friedman asked if the purchasers would be required to do upgrades through the developer. Atty. Ebersol said they would not.

Atty. Ebersol briefly discussed comparability. He said this was covered in case law only; not in the statute. He said it covers size and workmanship only and that two attorneys he consulted with said the proposal meets these standards.

Mr. Owen noted that all of the statements at the public hearing had indicated the units would be identical, so discussion of this issue with the public had never taken place. He did not consider the proposal to be a minor amendment and said a hearing to consider the modification would be required.

Mr. Owen noted the issue was whether the developer could build markedly different units. Atty. Ebersol responded that everyone would purchase the standard unit.

Mr. Owen requested full information regarding what the developer was proposing to build. Atty. Ebersol said this was not known yet.

A public hearing was scheduled for Monday, August 27, 2007 in the Land Use Meeting Room. Public hearings begin at 7:30 p.m. This will be the second hearing.

Mr. Shapiro asked how what would be done in the Berkshire package, finishing the basement, differed from the comparability case where the second floor had been unfinished. Atty. Ebersol responded that in the case because the second floor was not finished, the number of bedrooms wasn't comparable.

Atty. Ebersol again stated that if purchasers could not customize their units through the developer, the project would not be economically viable. Several commissioners thought this should have been figured out at the time of the original application. Atty. Ebersol noted that first the applicant had proposed two different sized units, but later changed them to all the same size with the possibility of customizing.

Mr. Owen noted the proposed modification was a complete change from the original proposal.

The material submitted tonight will be forwarded to Atty. Zizka for his review.

Review of First Cut Process: Mrs. Friedman noted she had discovered that the Commission had recently acted on an incomplete first cut application and she wanted to make sure this did not happen again. Mr. Ajello said that although the site development plan had not been available for the Commission to review at the meeting, it had been on file in the Health Department. The other item, driveway feasibility sign off was subsequently taken care of by Mr. Smith of the highway department. Mr. Ajello suggested amending the Regulations to include a list of all of the requirements for a first cut application. Mr. Fitzherbert thought that the process for first cut applications was simpler than that for subdivisions. Mrs. Hill responded that in Washington applications for first cuts are required due to the soil based zoning requirements and that the purpose was to ensure that the first cut was an approved building lot. Therefore, strict documentation was required. Mr. Owen suggested that Mr. Ajello draft a check list to use when reviewing these applications.

New Application

Stiteler-Giddens/262 West Shore Road/Special Permit: Section 6.4.9/Boathouse: Atty. Kelly arrived late and asked for an update. Mr. Owen explained the Commission had tabled the application because there had not been enough information to schedule a public hearing. Mr. Ajello noted that Health Department approval, Inland Wetlands approval, and a setback variance were all required for the application to be complete. Atty. Kelly argued that the Regulations state that setbacks do not apply to boathouses. Mr. Ajello said he would research the matter further. Atty. Kelly asked that the hearing be held at the July meeting and said the Commission could not require wetlands approval before scheduling a hearing date. Mrs. Hill explained per state statute the Commission has 65 days from the receipt date of an application in which to schedule the commencement of the required hearing. Mr. Owen noted that due to vacation difficulties, no hearings had been scheduled for July. Atty. Kelly asked if his clients could put up some type of temporary storage for the summer. Mr. Ajello noted the Zoning Regulations do not recognize temporary structures. Atty. Kelly asked if a trailer could be used temporarily for storage. Mr. Ajello recommended he consult with the DOT and said the Wetlands Commission would be concerned about the creation of a parking space. A public hearing was scheduled for August 27, 2007 in the Land Use Meeting Room. Hearings begin at 7:30 p.m. This will be the third

hearing.

Revision of the Regulations/Section 13.11/Accessory Apartments: Mr. Owen noted several weaknesses had been found in this section of the Regulations. He thought, however, that the intent as written in 13.11.1 was strong. It stated that it was not the Commission's intent that this section be used to circumvent soil based zoning. It had been noted during the previous discussion of the McTiernan application that the Commission had not anticipated such a small primary dwelling. Mr. Abella suggested that the Commission could require primary dwellings to be twice the size of the accessory apartment on the same lot. Mr. Owen noted in the past the Commission had discussed the possibility of not allowing apartments on properties that could not accommodate a second dwelling per soil based zoning. Mr. Ajello noted that in Warren accessory apartments are required to be located within 50 feet of the main house. Mrs. Friedman stated the Regulations had not always permitted apartments as large as 1200 sq. ft. and recommended the Commission return to the maximum size of 950 sq. ft. She thought the current language requiring apartments to be clearly subordinate should be retained. Mr. Ajello noted that today's housing needs might require slightly larger units. Mr. Abella thought 950 sq. ft. was not large enough. He did not favor decreasing the maximum size from 1200. Mrs. Hill briefly told of the changes to this section over the past 18 years; from a maximum of 1350 sq. ft. to 950, increased from 950 per request of the ZBA who was receiving too many variance requests, to a formula based on 30% of the floor area of larger homes, not to exceed 1500, and back down to 1200 sq. ft. Mrs. Friedman asked why two apartments; one attached, one detached, should be permitted on each property. She recommended that only one apartment be permitted per property. There was a consensus that only one apartment per property should be permitted. Mr. Fitzherbert said that any new regulations should not discriminate against the owners of smaller homes. The definition of floor area was briefly discussed. Mr. Ajello suggested that the accessory apartment regulations be tied in with the 75% requirement for accessory structures. Mrs. Hill cautioned the Commission not to define accessory apartments so narrowly that they could not be put in larger buildings such as old barns. Finished vs. unfinished areas were discussed. Mr. Ajello thought perhaps there could be maximum sq. footage set for both in the accessory apartment regs. It was noted there were many factors to consider. Mr. Owen asked Mr. Abella to draft revisions to use as the basis for discussion at future meetings.

Communications

Mr. Owen noted that the 6/7/07 letter he had written to Atty. Ebersol about the issue of comparability had been reviewed and revised by Atty. Zizka. Atty. Zizka had not signed it because he had not had time to review the tapes of the hearing.

Enforcement

Moore/25 Litchfield Turnpike: Mr. Ajello said he would ask Mr. Moore to remove the concrete slab next to the barn that had been recently rebuilt. He said Mr. Moore was working on getting a survey of his property. It was noted he would either have to move his business to a commercial property or to obtain a Special Permit for shop and storage use by contractors and building tradesmen for his residential property.

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

Mr. Owen adjourned the meeting at 9:52 p.m.

FILED SUBJECT TO APPROVAL

Respectfully submitted,

Janet M. Hill

Land Use Coordinator