

## • June 27, 2005

MEMBERS PRESENT: Mrs. Friedman, Mr. Martin, Ms. Page

ALTERNATE PRESENT: Mr. Shapiro

MEMBERS ABSENT: Mr. Fitzherbert, Mr. Owen

ALTERNATES ABSENT: Mr. Abella, Mr. Brinton

STAFF PRESENT: Mr. Ajello, Mrs. Hill

ALSO PRESENT: Mr. Meeker, Mrs. Buziak, Mr. Etherington, Mr. Worcester, Mrs. Oetjen, Mr. Charles, Mr. Gugel, Mr./Mrs. Fedderer, Press

### PUBLIC HEARINGS

#### **Meeker/269 New Milford Turnpike/Request to Amend 11/03 Special Permit for Outside Storage and Extension of Parking Area**

Mr. Martin reconvened the public hearing at 7:30 p.m. and seated Members Friedman, Martin, and Page and Alternate Shapiro. He then read the 6/27/05 ZEO Report.

Mr. Martin noted the hearing had been continued because there had been questions raised about the chemicals stored on the premises. He noted Mr. Etherington, Fire Marshal, was present and thanked him for attending.

Mr. Martin asked Mr. Etherington for his opinion about whether it was safer to store the pool chemicals inside the primary building or outside in the proposed plastic structure. Mr. Etherington stated he had asked that the chemicals be removed from the primary building because there had been an occupied apartment on the second floor. He stated they could be stored safely outside, either in a separate structure or in the open air.

The construction of the proposed storage structure was reviewed. Mr. Meeker described it as a "Cover-It" type of structure with a 20 mil polypropylene cover fabric that was waterproof, but breathable. He said it had zipper doors. Mr. Ajello noted a containment system was proposed for the floor to handle any spills of the liquid chemicals.

Mr. Martin noted the Commission's three areas of concern: 1) the storage of the chemicals on site, 2) the lack of security of the proposed structure, and 3) the visual impact from both neighboring properties and the road.

Mrs. Friedman said she had contacted other pool companies to learn how they stored their chemicals. Most said they stored all their chemicals inside and a few said they stored their liquid chemical containers outside. Mrs. Friedman said they also indicated the chemicals

should not be stacked too high. Therefore, she questioned whether the storage structure was needed, but said if it was needed, it should be the smallest structure possible to do the job.

Mr. Meeker stated his request for the outside storage structure was in response to Mr. Etherington's request to move the chemicals out of the main building. Mr. Martin asked that since there was no longer an apartment in the building, could the chemicals continue to be stored inside. Mr. Meeker said he had proposed to move them outside because he had been told it was safer for firefighters. It was noted Mr. Brinton had informed the Commission that the Fire Dept. had no problem with the storage of chemicals inside as long as they were informed in advance so they could draft a "pre plan" in case of fire.

Mr. Etherington suggested he move the chemicals to a wooden storage structure with a lock. Mr. Meeker said that this type of structure was too expensive at this time.

Ms. Page asked if Mr. Meeker could keep a lesser amount of chemicals on site by making smaller, but more frequent orders. Mr. Meeker said that would not be possible during the busy summer season, but he would store less chemicals on site during the colder months.

Mrs. Buziak stated that based on the information presented, she thought the chemicals should not be exposed to high heat or humidity. She asked if Mr. Meeker could line his basement floor and store the chemicals there because it was cool, dry, and secure. She objected to the outside storage structure due to its appearance.

Mrs. Oetjen, a Marbledale business owner, said her property had been vandalized and so she was concerned about securing the chemical storage area.

Mr. Martin asked Mr. Etherington which of the following two storage options was superior: 1) a temporary plastic structure to store the chemicals outside until the pool company could build a more permanent wooden structure; or 2) the liquid chemicals are stored outside and the dry chemicals, properly separated, stored inside until the wooden structure could be built. Mr. Etherington stated that either option was satisfactory, but option #2 was preferable. Mr. Meeker said it was a bit tight, but they were spread out as much as possible. Mr. Shapiro asked if the second floor could be used for chemical storage, but Mr. Meeker said it was already used for two offices and to store plastic equipment.

The Commissioners voiced their doubts that an outside storage structure was needed. It would not substantially improve safety and 99% of the other pool companies had inside storage with no problems. Mrs. Friedman also noted the original Special Permit had specified no outside storage and the proposed storage structure was not appropriate for the neighborhood. Mr. Etherington stated that as long as the proper separation distances were maintained it would be safe and feasible to store the dry chemicals inside and the liquid chemicals outside. Mr. Martin thought this was a reasonable and prudent solution.

MOTION: To close the public hearing to consider

the request to revise the 11/03 Special

Permit: Section 9.4.1.a issued to Mr.

Meeker for a retail business at 269 New

Milford Turnpike. By Mrs. Friedman,

seconded by Mr. Shapiro, and passed 4-0.

Mr. Martin closed the public hearing at 8:15 p.m.

**Attardi/75 West Church Hill Road/Special Permit: Section 13.11/ Detached Accessory Apartment/Con't.**

Mr. Martin reconvened the public hearing at 8:16 p.m. and seated Members Friedman, Martin, and Page and Alternate Shapiro.

Mr. Gugel represented the applicant. He presented a map, "Property/Boundary Survey," by Mr. Alex, dated March 2005 and pointed out the location of the proposed building within the lot's building envelope and said there were no wetlands or setback issues.

Mr. Martin read the 6/27/05 ZEO Report, which stated the application complied with all requirements.

The size of the apartment was discussed. The main house on the property is 4000 to 5000 sq.ft. and the proposed apartment was 1150 sq. ft. It was noted this would be the only apartment on the site. The elevations were reviewed.

No one from the public spoke for or against the application.

MOTION: To close the public hearing to consider

the application for a Special Permit:

Section 13.11 submitted by Mrs. Attardi

for a detached accessory apartment at 75

West Church Hill Road. By Ms. Page,

seconded by Mr. Martin, and passed 4-0.

At 8:20 p.m. Mr. Martin closed the public hearing.

**Revision of the Zoning Regulations/Sections 11.7.1 and 11.7.2/ Method of Measuring Maximum Vertical Height and Mean Height**

Mr. Martin called the public hearing to order at 8:21 p.m. and seated Members Friedman, Martin, and Page and Alternate Shapiro. Ms. Page read the legal notice published in the **WaterburyRepublican** on 6/16/05 and 6/23/05.

Mr. Martin explained the proposed revision would require, in most cases, the measurement of a building or structure to be taken from the average pre existing grade, not the finished grade as is currently done. This would close a loop hole that could allow taller buildings. Using the original grade was a fair method and better for the Town, he said. The exception would be when the original grade was higher than the finished grade. In those cases, the building would be measured from the finished grade.

Mr. Martin read the 6/7/05 Planning Commission minutes, which stated the Commission had no objection to the proposed amendments. He then read the 5/23/05 comments from Mr. McGuinness of the NW Ct. Council of Governments, who was concerned the proposed method of measurement might be time consuming. Mr. Martin then read the 6/27/05 ZEO report, which stated this method would take no more time than any other accurate measurement method and that benchmarks are already routinely used to determine the elevation of land.

Mr. Worcester asked if 35 ft. from the average grade to the midpoint of the highest roof was still the maximum height allowed. Mr. Martin said it was.

Mr. Martin read the definitions for Average Pre Existing Grade and Average Finished Grade, which were proposed for Section 21 of the Regulations.

Mr. Shapiro noted the current regulation called for the average grade to be taken 6 feet out from the building. Mr. Ajello explained it was worded that way to be consistent with the state building code. It was the consensus to retain that wording and remain consistent with the language in the building code. The definition of Average Finished Grade was revised to: The average of the highest point and the lowest point of land 6 feet outside the perimeter of a completed structure after final grading of soils has been completed.

There were no public comments for or against the proposed revisions.

MOTION: To close the public hearing to consider

proposed revisions to Sections 11.7.1 and

11.7.2 of the Washington Zoning Regulations

concerning the method of measuring maximum

vertical height and mean height of structures.

By Mr. Shapiro, seconded by Ms. Page, and

passed 4-0.

Mr. Martin closed the public hearing at 8:33 p.m.

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. Martin called the Regular Meeting to order at 8:34 p.m. and seated Members Friedman, Martin, and Page and Alternate Shapiro.

### Consideration of the Minutes

The 5/23/05 Regular Meeting minutes were corrected by Mr. Shapiro as follows:

Page 8: 4th line: Insert "Housing" after "Affordable."

18th line: Change the sentence beginning in this line to: "It was noted Mr. Shapiro obtained his statistical information from Hartford land use attorney, Timothy Hollister, who has closely monitored the number of affordable housing appeals from 1991 -2004."

Page 9: 16th line: Change the sentence beginning in this line to: "Mr. Shapiro cautioned, however, that traffic safety might not be a valid ground for denial unless a zoning commission could prove that the unsafe traffic condition could not be remedied by making reasonable changes to the affordable housing plan such as traffic lights, road widening, and improved sight lines."

MOTION: To accept the 5/23/05 Minutes as corrected

by Mr. Shapiro. By Ms. Page, seconded by

Mrs. Friedman, and passed 4-0.

MOTION: To accept the 6/2/05 site inspection Minutes

as written. By Mr. Shapiro, seconded by Ms.

Page, and passed 4-0.

### Pending Applications

**Meeker/269 New Milford Turnpike/Request to Amend the 11/03 Special Permit: Section 9.4.1.a for Outside Storage and Extension of Parking Area:** It was the consensus that since the original request from the Fire Marshal to stop storing pool chemicals inside the main building on the property was made because there had been an apartment on the second floor, and since the apartment no longer exists, the changes in the method of storage were no longer needed. The dry chemicals could be stored inside and the liquid chemicals outside. It was noted the Fire Marshal had indicated it was safe to do so and Mrs. Friedman had contacted several other pool companies who indicated this

was how they stored their chemicals and there were no regulations against doing so. It was also noted the Inland Wetlands Commission had objected to the proposal to move the storage of the chemicals closer to the river. The Commissioners did not think the plastic storage structure was appropriate for the neighborhood and urged Mr. Meeker to work towards the construction of a wooden storage building in the future. Mr. Meeker said he planned to do so. Mr. Martin noted the Zoning Commission has supported local small businesses in the past because doing so was consistent with preserving the Town's rural character. In this case, however, he noted there was a reasonable and prudent alternative to the proposed storage structure. This alternative was to store the liquid chemicals outside and the dry chemicals inside separated by an appropriate distance. He said this was OK from a fire code standpoint and the Fire Marshal had stated it was acceptable. He thanked Mr. Meeker for his cooperation.

MOTION: Regarding the request submitted by Mr. Meeker

to amend his 11/03 Special Permit: Section

9.4.1.a for a retail business at 269 New

Milford Turnpike, the 11/03 Special Permit

is amended as follows: 1) Outdoor storage of

unopened liquid chemical car boys in the rear

of the principal structure is approved as a

reasonable and prudent alternative to erecting

a plastic film based storage structure as

shown in the record of the public hearing and

confirmed by the Fire Marshal. Dry based

swimming pool chemicals will continue to be

stored inside the principal structure, which

is not being used as a dwelling per input from

the Fire Marshal. 2. The outdoor plastic film

based storage structure is denied because the

above reasonable and prudent storage alternative is available to the applicant. 3. The extension of the gravel parking area as shown on the untitled, undated, site plan marked, "Considered at 6/27/05 public hearing," is approved.

By Mr. Martin, seconded by Ms. Page, and passed 4-0.

**Attardi/75 West Church Hill Road/Special Permit: Section 13.11/ Detached Accessory Apartment:** It was noted that there were no areas of non compliance identified and no objections presented at the public hearing.

MOTION: To approve the Special Permit application:

Section 13.11 submitted by Mrs. Attardi for a detached accessory apartment at 75 West Church Hill Road. By Ms. Page, seconded by Mr. Shapiro, and passed 4-0.

Other Business

**Revision of the Zoning Regulations/Sections 11.7.1 and 11.7.2/Method for Measuring Maximum Vertical Height and Mean Height:** It was noted there had been no objections at the public hearing and that the revisions would include definitions in Section 21 for Average Pre Existing Grade and Average Finished Grade as discussed at the hearing.

MOTION: To approve revisions to the Washington Zoning

Regulations to Sections 11.7.1 and 11.7.2:

the method of measurement of maximum vertical height and mean height of structures and Section

21: definitions for Average Pre Existing Grade and Average Finished Grade to be effective on the earliest possible date after the publication of the legal notice. By Mrs. Friedman, seconded by Ms Page, and passed 4-0.

#### Other Business

**Wright/14 Kinney Hill Road/Request to Renew Special Permit: Section 13.16/Shop and Storage Use by Contractors and Building Tradesmen:** Mr. Martin read the 6/27/05 ZEO report. It was noted Mr. Wright has operated under this permit since 1990 and that there were no complaints on record for the last two years.

MOTION: To approve the renewal of the Special Permit:

Section 13.16 issued to Mr. Wright for shop and storage use by contractors and building tradesmen at 14 Kinney Hill Road. By Ms. Page, seconded by Mr. Shapiro, and passed 4-0.

#### Multi Family Housing:

- Mr. Martin noted Mr. Shapiro had written a memo dated 6/23/05 in response to Mr. Finkler's claims made at the last meeting that adverse impact on traffic could be a valid reason for denying an affordable housing application. He asked the Commissioners to review the memo and forward any questions to Mr. Shapiro.
- Mr. Martin said he had researched Mr. Fitzherbert's question of whether the Commission could require a fee in lieu of affordable housing. The Commission had been interested in this possibility because it could be used to cut down the size of a multi family housing development on a particular site, while still getting additional affordable units to work towards the Town's 10% goal. Atty. Zizka had advised him the Commission has no authority under the state statutes to receive fees in lieu of affordable housing. However, in Atty. Zizka's opinion, the Commission could establish its own regulation, which could allow the affordable housing requirement to be satisfied on a different site. The applicant could work with the Board of Selectmen or Housing Trust to find a mutually agreeable site for either new or refurbished affordable units. The Town would gain affordable units and end up with less intensive development on site. Mr. and Mrs. Fedderer had several specific questions about this concept, which were premature for the Commission to answer since it had discussed it for only the first time this



evening. Mr. Martin stated this concept could not happen under the state's Affordable Housing Appeals Act and thus it would be beneficial for the Town to adopt zoning regulations to allow multi family housing if it truly wants to keep multi family projects the smallest size possible. **It was the consensus this was a creative and flexible approach that should be investigated further.**

- Standards for multi family housing were discussed. To start the discussion, Mr. Martin had drafted twelve standards to be considered in addition to the standards specified in Section 13.1.B of the Regulations as a basis for discussion. These included provisions regarding

A-2 survey requirements, setbacks, frontage, buffering, landscaping, parking, Health Dept. approval, building locations, underground utilities, maintenance, bonding, maximum size of developments, and cumulative cap on the total number of units permitted. During the discussion several other issues to be considered were noted. These included coverage, architecture, percentage of affordable units to be required, and preservation of historic structures. **It was the consensus the percentage of affordable units required would be set at 10%.** This percentage would not be so low that it would work against the Town's progress towards the state's 10% affordable housing goal, but still would be low enough to an incentive to developers to apply under the local zoning regulations. **It was reconfirmed that the total number of cumulative units allowed would be 50 and that this number would be computed from the effective date of the revised Regulations.** Mr. Martin asked the Commissioners to contact Mrs. Hill with ideas for these or any other standards that should be considered. Discussion will continue at the next meeting.

**Revision of the Zoning Regulations/Section 12.1/Wetlands and Watercourse Setbacks:** The proposed revisions are necessary in order to carry out the Lake Waramaug Agreement. Mr. Martin noted input from Mr. McGowan for the Lake Waramaug Association and Mr. McGuinness, NW Ct. Council of Governments had been incorporated into Draft 2. **A public hearing was scheduled for Monday, August 22, 2005 at 7:30 p.m. in the Land Use Meeting Room, Bryan Memorial Town Hall.**

**Revision of the Zoning Regulations/Viewshed Protection:** The first draft had been overly complicated. Mr. Fitzherbert will schedule a meeting with Mr. Ajello, Mrs. Frank, and Mr. Sonder to work out revised language and to decide what elevation will trigger the new regulations.

**Revision of the Zoning Regulations/Section 16/Signs:** Mrs. Friedman will soon meet with the Washington Business Assoc. to get its input on the draft revisions to the sign regulations.

New Application

**Institute for American Indian Studies/38 Curtis Road/Special Permit: Section 4.4.10/Deck for Museum**

Mr. Worcester, architect, represented the Institute. He presented the map, "Site Plan," by Mr. Worcester, revised to 5/16/05 and noted he had a letter of authorization in the file. He said the deck would be off the children's discovery room and would be handicapped accessible. No trees will be cut in order to construct the deck. **A public hearing was scheduled for Monday, July 25, 2005 at 7:30 p.m. in the Land Use Meeting Room, Bryan Memorial Town Hall.**

Communications

Mr. Martin briefly reviewed the Supreme Court's decision in the New London eminent domain case, in which it ruled the rights of a private property owner could be superseded by a plan that incorporates a taking by eminent domain on behalf of a private developer as long as there is a general benefit to a town such as increased tax revenues. The Court did rule, however, that local governments may impose stricter controls if they choose. For example, eminent domain may be imposed only for a public owned entity or to address blight. **It was the consensus of the Commission to authorize Mr. Martin to write to the Board of Selectmen to urge them to propose an ordinance to safeguard the rights of private property owners in Washington, with copies to our state representatives.** There are other states that already have such laws and these could be used to help draft the ordinance.

**Walker Brook Estates/Rt. 109, New Milford:** Mr. Martin noted the Inland Wetlands Commission was doing an excellent job following the application process in New Milford. He referred to the last letter submitted to New Milford, dated 6/9/05 and noted his appreciation to Inland Wetlands for all the good work it is doing.

MOTION: To adjourn the meeting. By Mrs. Friedman.

Mr. Martin adjourned the meeting at 10:06 p.m.

FILED SUBJECT TO APPROVAL

Respectfully submitted,

Janet M. Hill, Land Use Coordinator