

August 23, 2010

Present: David Owen, Lou Abella, Ray Reich, Ralph Averill, Gary Fitzherbert

Alternates Present: Andy Shapiro, A.J. Dubois

Absent: Harry Wyant

Staff Present: Janet Hill, Shelley White

Others Present: Ms. Field, Mr. Davenport, First Selectman Lyon, Mrs. Lyon, Mr. Szymanski, Mr. Klauer, Ms. Klauer, Mr. & Mrs. Klein, Ms. Weeks, Mr. Wellings, Ms. Sutter, Atty. Kelly, Ms. Ebner Martin, Mr. Ebner, Ms. Carron, Mr. Gambino, Mr. & Mrs. Peacocke, Mr. Snook, Selectman Solley, Residents

PUBLIC HEARINGS

Seated: Mr. Owen, Mr. Averill, Mr. Fitzherbert, Mr. Abella, Mr. Reich

Sandals-Field/25 RiverRoad/Special Permit: Section 13.11.3/Detached Accessory Apartment:

Mr. Owen started the Public Hearing at 7:37 pm. Ms. Hill read the legal notice published in Voices on August 11 and August 18, 2010. Mr. Owen read the list of contents of the file for this application. Ms. Field was present and stated that they would like to finish the second floor of the existing garage to include a bedroom, living space, kitchenette and bathroom. The Commission looked at Elevations and Floor Plans of Existing Garage and Proposed Accessory Apartment, by Hinkel Design Group, LLC., dated June 8, 2010, sheets A-1, A-2& A-3. Ms. Field stated that the main house is 2700 square feet and the second floor of the proposed accessory apartment is 600 sq. ft. and the first floor parking area is 600 sq. ft. The Commission looked at the "Map prepared for John H.S. and Joyce H. Cook," by Mr. Burnham, dated 6/15/77 with the location of the garage and driveway sketched on by the property owner. There were no further questions or comments.

Motion:

to close the Public Hearing for Sandals-Field/25 River Road/Special Permit: Section 13.11.3 for Detached Accessory Apartment, by Mr. Fitzherbert, seconded by Mr. Reich, by 5-0 vote.

Davenport/51 Dark Entry Road/Special Permit: Section 13.16/Shop and Storage Use for Contractors and Building Tradesmen:

Mr. Owen read the list of contents in the file. Ms. Hill read the legal notice published in Voices on August 11 and 18, 2010. Mr. Owen read Ms. Hill's Administrative Report dated 8/23/10 stating that Mr. Davenport had submitted a revised plan to show only 4,800 sq. ft. of outside storage and a driveway to access it. Mr. Davenport was present and submitted a photo of the type of buildings he constructs. Ms. Hill stated that there was a letter of support in the file from Mr. Bedini, an adjoining property owner. There were no further questions or comments.

Motion:

to close the Public Hearing for Davenport/ 51 Dark Entry Road/Special Permit Section 13.16 for Shop and Storage Use for Contractors and Building Tradesman,

by Mr. Fitzherbert, seconded by Mr. Averill, by 5-0 vote

Klein/236 Tinker Hill Road (West Shore Road)/Special Permit: Section 6.4.6/Gate on the Lake Waramaug Side of West Shore Road:

Mr. Averill asked the Commission to delay the Public Hearing for this application. He stated that adjoining property owners in opposition of the application went home because he misinformed them that there was not going to be a Public Hearing. The adjoining property owners were notified and were returning to the Town Hall so that they may participate in the Public Hearing.

Motion:

to delay the Public Hearing for Klein /236 Tinker Hill Road (West Shore Road)/Special Permit Section 6.4.6 for Gate on Lake Waramaug side of West Shore Road until 8:15,

by Mr. Owen, seconded by Mr. Averill, by 5-0 vote

REGULAR MEETING

Motion:

to add Elbow Partners, LLC/110 Calhoun Street/Special Permit: Section 13.11.3/Detached Accessory Apartment as item E under Section IV. New Applications,

by Mr. Owen, seconded by Mr. Averill, by 5-0 vote.

Consideration of the Minutes

Corrections:

Page 2, under the first Public Hearing, Paragraph starting with “Mr. Owen reconvened”, 2nd sentence: listed should be: listen After the last sentence in the paragraph beginning with “Mr. Owen read the 7/20/10 supplement”, add: The Planning Commission stressed that it had, in fact, considered the applicable Section 13 Special Permit criteria in reaching its decision, but found them inadequate to overcome the threat to “rural character” posed by the proposed inn regulations.

Page 5 , Paragraph beginning with Mrs. Stacey Mathews, Windvian should be: Winvian. Last sentence in this paragraph should begin: She also noted the Mayflower.... The July 26, 2010 Zoning Commission Regular Meeting Minutes were considered:

Motion:

to accept the Zoning Meeting Minutes of July 26, 2010, as amended,

by Mr. Owen, seconded by Mr. Averill, by 5-0 vote.

Pending Application(s)

Sandals-Field/25 RiverRoad/Special Permit: Section 13.11.3/Detached Accessory Apartment:

There were no additional comments or questions.

Motion:

to approve Special Permit Application submitted by Sandals-Field/25 River Road/ Special Permit: Section 13.11.3/Detached Accessory Apartment,
by Mr. Averill, seconded by Mr. Abella, by 5-0 vote.

Davenport/51 Dark Entry Road/Special Permit: Section 13.16/Shop and Storage Use for Contractors and Building Tradesmen:

There were no additional comments or questions.

Motion:

to approve Special Permit Application submitted by Davenport/51 Dark Entry Road/ Special Permit: Section 13.16/Shop and Storage Use for Contractors and Building Tradesman,
by Mr. Abella, seconded by Mr. Averill, by 5-0 vote.

New Application(s)

Town of Washington/10 Blackville Road/Revision of Special Permit: Section 4.4.9/Facilities of the Town of Washington/Driveway, Stormwater Management, Outdoor Storage Area:

First Selectman Lyon stated that the Town would like to construct an outside storage area for road materials at the Town Garage site in an effort to relocate the materials that are stored at the Titus Road location. He stated that the Town has applied for a Variance for setback and lot coverage requirements with the Zoning Board of Appeals. The location of the proposed storage was chosen for accessibility and because it was one of the more level areas of the site. Ms. Hill suggested that the Town buffer the proposed storage area as it is close to the property lines.

Motion:

to schedule a Public Hearing at 7:30 on September 27, 2010, in Bryan Memorial Town Hall, to consider the application for Town of Washington/10 Blackville Road/Revision of Special Permit: Section 4.4.9/Facilities of the Town of Washington/Driveway, Stormwater Management, Outdoor Storage Area,
by Mr. Owen, seconded by Mr. Abella, by 5-0 vote.

Davis/120 Roxbury Road/Special Permit: Section 13.11.3/Detached Accessory Apartment:

Mr. Owen read Ms. Hill's Administrative Report dated 8/23/10. There were no pending issues.

Motion:

to schedule a Public Hearing on September 27, 2010, in Bryan Memorial Town Hall, to consider the application for Davis/120 Roxbury Road/Special Permit: Section 13.11.3/Detached Accessory Apartment,
by Mr. Owen, seconded by Mr. Reich, by 5-0 vote

Wykeham Rise, LLC./101 Wykeham Road/Revision of Special Permit: Section 4.4.10/School:

Mr. Klauer stated that they are applying for a modification of an existing special permit. He stated the modifications include increasing the parking spaces, adding online classes, and eliminating the part of the Special Permit that was approved in 1990 that calls for a minimum of 5 rooms for an inn. Wykeham Rise, LLC has also submitted a request to the Inland Wetlands Commission to revise its permit for the Wykeham Rise Inn. Mr. Owen stated that not using the existing building and proposing a new site plan and new structures would also be a modification to the existing Special Permit. Mr. Klauer stated that Wykeham University would not be seeking University accreditation but would be a 'for profit educational institution' offering continuing adult education classes at a college graduate and postgraduate level. Mr. Owen stated that the Zoning Commission would consult Atty. Zizka to discuss whether this is a school by definition in Connecticut and in the Town of Washington. It was noted that the Swiss Hospitality Institute was not an accredited institution. There was a brief discussion regarding Section 21.1 of the Zoning Regulations. Mr. Klauer stated that there were a couple of mistakes with the proposed plan submitted with this application. He stated that he would submit a corrected version by Friday.

Mr. Shapiro asked if rooms for inns were eliminated from this application. Mr. Klauer confirmed that they were not part of this application and that one of the modifications to the existing Special Permit that they are requesting is that the minimum of a 5-room inn component be eliminated. Mr. Klauer confirmed that the rooms on the proposed plan are to be used as housing for the students. He stated that the proposed plan has 61 dorm rooms and that the existing Special Permit allows for a maximum of 120 boarding students. Mr. Klauer confirmed that the proposed fitness center would not be operated as a spa and will only be used by the students.

Mr. Averill asked if there would be any culinary offerings to the public. Mr. Klauer stated that only the students and school staff would use the cafeteria and kitchens. Mr. Shapiro asked if the cafeteria would be a traditional cafeteria or would it be a dining room with waiters and service. Mr. Fitzherbert stated that at Glenholme Devereux School the food is served at the table.

Mr. Owen stated that the Zoning Commission has 65 days after receipt of an application to schedule a public hearing and asked the Commission how they would like to proceed. Mr. Averill stated that he would like to wait to discuss this application with Atty. Zizka. Mr. Klauer stated that he would appreciate any feedback so that they could address any concerns that the Commission would have.

Ms. Hill stated that she was concerned about the existing entrance-exit. She stated that she asked Atty. Zizka if the Zoning Commission could be held liable if it approved an application and there were no changes to this entrance-exit, and an accident occurs. She stated that he advised that he was not certain, but thought it was less likely that the Commission would be liable if the decision was based on the advise of the Commissions consultant. She recommended that the Commission refer this matter to a consultant, which would be paid for by the applicant, per Ordinance #711.

Mr. Owen stated that he questions whether this is an application for a school because it is so similar to the plan for the Wykeham Rise Inn that was denied. He stated that this application raises questions about traffic, driveways and scale that are specific to this property and not just the use of an 'inn'. Mr. Fitzherbert stated that there are a number of different associations that an institution could choose to join that would provide certification and accreditation to the school.

Mr. Klauer stated that the footprint of this proposed plan is very similar to the previously denied application and asked that it not be compared to the denied application. Mr. Owen stated that there are questions that have to do with the property that had nothing to do with

the fact that the previous application was for an inn. He stated that there are questions regarding scale, which may be different for a school. He stated that the applicant should be prepared to explain, for instance, if scale was a concern the first time around, why would it be different, or not, for this application. Ms. Hill stated there are three major differences between this application and the previous application: 1. Schools are permitted by Special Permit in the R-1 district. 2. This specific property has a history of schools and 3. There is a Special Permit on the Land Use Records for a school on this property. Mr. Shapiro stated that he would be concerned whether any aspect of this university would develop into a commercial enterprise that veers away from a school use. It was the consensus of the Commission that they would like to consult with Attorney Zizka before scheduling a public hearing for this application.

PUBLIC HEARINGS – Continued

Klein/236 Tinker Hill Road (West Shore Road)/Special Permit: Section 6.4.6/Gate on the Lake Waramaug Side of West Shore Road:

Mr. Owen opened the Public Hearing at 8:25 pm. Ms. Hill read the legal notice published in Voices on August 11 and August 18, 2010. Mr. Owen read the list of contents in the file. Mr. Owen read Ms. Hill's Administrative Report dated August 23, 2010. Mr. Owen read a letter of opposition from Ms. Natalie Frost Weeks, an adjoining property owner on West Shore Road. The Commission looked at photos of the height of the gate compared to the existing fence posts. Mr. & Mrs. Klein were present and explained that the existing posts were necessary for the railing that goes down the steps to the dock. Mr. Owen read the ZEO report, dated August 23, 2010, regarding this property. In his report, Mr. Ajello, ZEO, states that the proposed structure and plantings do not appear to be excessive or improper. Mr. Wellings, an adjoining property owner, stated that there isn't anything but vegetation along that section of the road, that the proposed gate would be an eyesore and ruin the natural landscape and a gate would not prevent trespassers from going down to the dock. Ms. Sutter, from West Shore Road, stated that she was concerned that the gate would harm the scenic views. She stated that the road was designated a Scenic Road by the State of Connecticut in 1996. She read a letter from the State, which stated that "the positive response from the Connecticut Historical Commission and the impressive vistas and views provided along this rural roadway were instrumental in positively processing the nomination." She stated that feels the fences and gates are not what the State intended to be part of the Scenic Road Designation. She agrees with Mr. Wellings that if someone wanted to access the dock that this gate would not prevent them from doing so. Ms. Sutter also questioned the location of proposed plantings. Atty. Kelly stated that he represents an adjoining property owner and they do not have any objections. Mr. & Mrs. Klein stated that they had not met with their neighbors because they did not think it would be such a problem. Ms. Sutter asked how far the State right of way extends. The Commissioners looked at the Site Analysis Plan, by Michael Alex, Surveyor, dated October 2009. Mr. Owen read Section 6.4.6 of the Zoning Regulations. Ms. Klein stated that the proposed gate would be 7 feet from the edge of the road and that the State Department of Transportation has approved the location. There were no further questions or comments.

Motion:

to close the Public Hearing for Klein/ 236 Tinker Hill/Special Permit: Section 6.4.6/Gate on Lake Waramaug side of West Shore Road, by Mr. Owen, seconded by Mr. Averill, by 5-0 vote.

Pending Application- continued

Mr. Abella stated that the Lake Waramaug area is sensitive and that he agrees with the findings of the ZEO. Mr. Reich stated that he does

not feel that he has enough information and could not visualize the impact the gate would have on the view of the lake by the pictures that were submitted. Mr. Averill stated that the proposed open picket gate would not unduly obstruct the view. Mr. Fitzherbert stated that it's difficult to get a full visualization but feels that it will not obscure the view. Mr. Owen stated that there is nothing in the Zoning Regulations that would allow the Zoning Commission to deny this application.

Motion:
to approve Special Permit submitted by Klein/236 Tinker Hill/Special Permit Section: 6.4.6/Gate on Lake Waramaug side of West Shore Road,
by Mr. Owen, seconded by Mr. Averill, by 5-0 vote

New Application(s) – Continued

Elbow Partners, LLC/110 Calhoun Street/Special Permit: Section 13.11.3/Detached Accessory Apartment:

Ms. Hill stated that there is an issue with the size of the proposed detached accessory apartment and its access to an adjoining recreation room. The Commission looked at the 2nd Floor Proposed Construction Plan by Daniel Frisch Architect, drawing # A.B-03 with a revision date of 8/19/10. Atty. Kelly discussed the recent history of the property. He stated that the current owners are going save and use the structures that exist and convert the barn as the residence and the farmhouse into the detached accessory apartment and recreation room. He stated that the recreation area is not part of the accessory apartment. The Commission and Atty. Kelly discussed how the recreation area and the accessory apartment could be separate but under one roof.

Motion:
to schedule a Public Hearing on September 27, 2010 in Bryan Memorial Town Hall, to consider the application for Elbow Partners, LLC./110 Calhoun Street/Special Permit: Section 13.11.3/ Detached Accessory Apartment,
by Mr. Owen, seconded by Mr. Averill, by 5-0 vote.

Other Business

Tracy/47 Rabbit Hill Road/Renewal of Special Permit: Section 13.16/Shop and Storage Use by Contractors and Building Tradesmen:

There were no further questions or comments regarding this renewal.

Motion:
to approve the Renewal of Special Permit Tracy/ 47 Rabbit Hill Road/Special Permit: Section 13.16/Shop and Storage Use by Contractors and Building Tradesmen,
by Mr. Owen, seconded by Mr. Averill, by 5-0 vote.

Ebner/25 Mt. Tom Road/Preliminary Discussion/Expansion of Camp:

Mr. Oscar Ebner and his daughter, Ms. Kristin Ebner Martin, were present. The Commission and the Ebners looked at the map: Property-

Line Transfer, prepared for Oscar Ebner, Jr., by Guiliano Land Surveying, LLC, dated 11/20/09. Mr. Ebner stated that they purchased the adjacent property and are in the process of filing for a first cut lot. He stated that the property is located in a residential zone and the existing camp was grandfathered in on the original property and they would like to extend the camp operation in to the recently acquired 25 Mt. Tom Road. Ms. Ebner Martin discussed future plans for Camp Chinqueka. She submitted research data from the American Camp Associations and discussed the positive impact that the extension of the camp would have on the community. Ms. Hill suggested that the Ebners could petition to amend the regulations to allow the expansion of a nonconforming use by special permit. Mr. Owen stated that there are two ways to proceed: 1. To make camps a permitted use in the R-1 district, and, 2. Permit an existing non conforming camp to enlarge its operation to an adjacent property by special permit. There was a brief discussion about how they would develop the camp property. Ms. Hill suggested that the revision to the regulation should be done before the lot line revision. Mr. Averill stated that he was in favor of allowing an existing non conforming camp to expand but not to allow camps as a use in all of the R-1 district. Ms. Hill stated that she and Mr. Owen would work on the wording for the next meeting and then if the Commission agrees with the wording a public hearing could be scheduled for the month of November.

Carron/Discussion of Section 13.8/Excavation Limitations:

Ms. Carron was present to discuss Section 13.8. Ms. Carron stated that her neighbor, Mr. Gambino, has been mining stone from his property since 2009 and that there has been jack hammering at 7 am, during the weekend, and constant movement of large trucks loading and unloading materials and traveling up and down the road. Ms. Carron submitted photos of the on going work. She stated that she and her husband are seeking relief and would like to have 11 words removed from Section 13.8 and this deletion would limit the amount of stone that could be taken out. She stated that she contacted the ZEO who informed her that Section 13.8 allows the removal of 100 cu. yds. of material per calendar year without a permit. Mr. Ajello did visit the site and request that Mr. Osborne, contractor at the site, discontinue the use of the jackhammer because the processing of excavated material on site in the R-1 District is not permitted. Ms. Carron stated that the truck activity continues. Ms. Hill stated that Mr. Ajello did not find any soil erosion issues or disturbance of wetlands. Mr. Owen stated that it is not clear that Mr. Gambino is violating the regulations. Mr. Averill asked if the police had been contacted. Ms. Carron stated that she did call the police and they told her this was a civil issue. Mr. Owen stated that Ms. Carron could submit her proposed revision as a petition to change the regulation. There was a brief discussion regarding State noise regulations. The Commission discussed Section 13.8. Mr. Fitzherbert stated that it does not make sense that an individual that has a Special Permit to excavate more than 100 cu. yds. has stated hours of operation but otherwise hours of operation are not enforced. Mr. Fitzherbert volunteered to work on this section of the Regulations and provide feedback at the September meeting. Ms. Carron stated that she would look at the definition of 'Excavation' and Section 13.8 with her husband and then talk with Ms. Hill as to how she would like to proceed with petitioning to have this regulation revised.

Revision of Zoning Regulations/Section 12.14/Generators, Air Conditioners, Pool Filters, and Other Noise Generating Equipment:

Mr. Randy Snook, ZBA Commissioner, was present to discuss the revision of Section 12.14. Mr. Owen thanked the ZBA for drafting this revision. Ms. Hill asked about faulty equipment. Mr. Snook suggested that if the generator is not working properly it would not produce the energy for the home and it would be the owner's responsibility to fix it. Ms. Hill asked how the decibel levels were figured. Mr. Snook stated that it does not take into account changes in humidity, wind direction, topography, etc and that is why they require a stockade fence around the unit in order to deflect any sound waves vertically. There were no further questions or comments.

Motion:

to schedule a Public Hearing at 7:30 on October 25, 2010, in Bryan Memorial Town Hall to consider the Revision of Zoning

Regulations/Section 12.14/Generators, Air Conditioners, Pool Filters, and Other Noise Generating Equipment, by Mr. Owen, seconded by Mr. Averill, by a 5-0 vote.

Privilege of the Floor

Mr. Robert Gambino stated that he would like the Zoning Commission to think carefully before revising Regulation 13.8. He stated that he had his property appraised and was advised on how to make the property a building lot. He stated that in the process, granite was discovered on the property and is now being harvested and that he does not exceed the 100 cu. yd. per year limit. Mr. Gambino stated that his contractor drives down Gunn Hill Road when he moves the stone. He apologized if the contractor worked on a weekend and has asked the contractor to work reasonable working hours. Mr. Averill asked Mr. Gambino if the stone continues to be harvested to ameliorate the site and if he sees a projected completion of this project. Mr. Gambino stated that he wants access from Tinker Hill Road and a building site. He stated that this won't be finished in 6 weeks but it would not take 6 years. Mr. Averill suggested that Mr. Gambino should be able to calculate how much more stone needs to be removed to create this building lot. The Commission recommended that Mr. Gambino have the property surveyed and figure out when this project will end and that the excavation work be scheduled for times when the Carrons will be away.

Communications

Email Re: Code of Ethics from Mr. Burke:

Mr. Owen recommended that the Commissioners read this email.

Enforcement

The Commission considered the ZEO report date August 23, 2010

Adjournment

Motion:

to adjourn at 10:03 pm by Mr. Averill, seconded by Mr. Owen, by 5-0 vote.

Mr. Owen adjourned the meeting.

SUBMITTED SUBJECT TO APPROVAL:

Shelley White, Land Use Clerk,

Posted: August 11, 2010

PLEASE NOTE:

The following three letters, which are part of the minutes of the July 28 Public Hearing, were not available when the minutes were posted on August 9.

David Owen
Notes. July 26, 2010

The Washington Planning Commission has unanimously recommended that the Zoning Commission not adopt its proposed regulation changes regarding inns. At the last meeting, I read aloud the Planning Commission's statement regarding those proposed changes. Planning has followed that recommendation with an additional statement, which I will read now: [new letter from Planning Commission]

I'd also like to read a few passages from "What Is Legally Required?", which is a book written by the town's own land-use attorney, Michael Zizka, and a reference work we often turn to:

First of all, the Plan of Conservation and Development, in Zizka's recapitulation of Connecticut statutes, should represent the Planning Commission's "recommendation for the most desirable use of land for residential, recreational, commercial, industrial, and other purposes, and for the most desirable density of population in the various parts of the municipality." The plan must, among other things, "be a statement of policies, goals and standards for the physical and economic development of the municipality, and recommend the most desirable types of uses and population densities in the various parts of the municipality." It must also, among still other things, "be designed to promote with the greatest efficiency and economy the coordinated development of the municipality and the general welfare and prosperity of the people of the municipality."

The POCD, which was last revised in 2003, is of considerable interest to the Zoning Commission. As Zizka also writes, "Although the plan is not legally binding on the zoning commission, it must be considered whenever zoning regulations are adopted or amended. If the municipality has a combined planning and zoning commission, the commission must state on the record its findings as to whether any proposed zoning regulation or amendment is consistent with the plan. If the zoning commission is separate from the planning commission, it must refer any proposed zoning regulation or amendment to the planning commission for a report on consistency with the plan. Any proposal disapproved by the planning commission can be adopted only by a vote of not less than two-thirds of all the members of the zoning commission" — on a five-member commission, which is what we have, that's a vote of at least four to one.

The Planning Commission made an emphatic case that the inn-related regulation changes proposed by the Zoning Commission are contrary to the POCD. But the POCD is a rich document, and it can be read in more than one way. Here's a passage that I think is both important and incontrovertible:

The arrival of rail service [in 1872] resulted in another change in the local economy. Washington was now more accessible from a larger

area and trains brought an increasing number of city dwellers seeking rural vacation retreats. Inns and boarding houses were established around Lake Waramaug with horse and carriage service to the New Preston train station. The whole town became a rural, second home retreat for many New York City residents.

This remains true today. And I believe that when we talk about “rural character”—that ineffable, impossible-to-define quality that we all celebrate, and that runs through the POCD and our regulations—we are also, necessarily, talking about this. In addition, when the POCD lists the existing “community strengths” that contribute to this character, they include the sole surviving inn that is fully within the town limits, the Mayflower Inn.

In the section of the POCD that directly addresses the preservation of “rural character,” the plan identifies six areas of concern and proposes strategies for them. Those six areas are natural resource elements, open space, scenic resources, agricultural land and farming, historic resources, and architectural design. These are all important, and not only to the planning commission: concern for them is reflected throughout our zoning regulations. But most of them have more to do with how the town looks than with how it functions, and I would suggest that there is an additional, critical element of “rural character”—what the POCD referred to in a previous section as “community strength” but isn’t mentioned here.

The hospitality business has been a big part of the town’s economic and civic life for more than a century, just as schools and farms and shops and weekenders have been. I am convinced that inns were very much in the minds of the authors of our zoning regulations, back in the nineteen-thirties, and that they have been in the minds of subsequent zoning commissioners, at least until very recently. One of the things that struck me in reading Janet’s excellent summary of the history of the commission’s treatment of inns—a copy of which is in the file—is the extent to which parts of our regulations seem to have evolved almost by random mutation. Even so, inns have always been included, and have, therefore, always been part of the town’s conception of “rural character”—the indefinable but cherished local quality that we are charged to protect. Rural character, in my view, is not strangers living in widely separated houses on seldom-traveled roads. Rural character is, more than anything else, a spirit of community and interdependence. It’s the town hall and the grocery store and the firehouse and the nursery school and the library and the Gunnery and the pizza place and the town beach and Devereux-Glenholme and the Mayflower, along with all the residents and visitors who regularly come together in those places. The rural character of Washington would be terminally diminished if such places were replaced with empty fields, even though local decibel levels and traffic counts would decrease.

For those reasons, I believe that, contrary to the opinion expressed by the Planning Commission in its report of July 21, 2010, inns should be considered to be among those “uses which will retain the rural character and natural beauty of the Town.” The dangers cited by the planning commission are real. But the special permit standards of the zoning regulations give the commission the tools it needs to protect the town and its rural character—tools that it has never hesitated to use in the past, including on applications regarding inns. The planning commission, in that same letter, describes a hypothetical inn that includes such amenities as a restaurant a bar, a spa, a fitness facility, a retail shop, and conference and meeting rooms—and says that such an inn would be “fundamentally incompatible with the goal of the POCD to preserve rural character” and that “such a commercial enterprise may be suitable for a business district, but not for our protected residential districts.” But the hypothetical inn described by the Planning Commission is indistinguishable from the Mayflower—which the POCD itself lists among Washington’s “community strengths.” Furthermore, since at least the seventies the only place in town where such an enterprise could be build is the R-1 residential district.

The narrow question before us is whether our zoning regulations should allow for inns with the size, scope and intensity of use equivalent to the Mayflower Inn to be built on our town roads. For at least 32 years the answer to that question has been “no”.

That narrow question has caused many of us to consider the broader issues of who we are and who we want to be as a town. This is America. We believe in capitalism. We support private enterprise. We support individual rights and the pursuit of life, liberty and even sometimes happiness. But when one person’s pursuit of happiness or profit adversely impacts another person – or a whole neighborhood – our Constitution authorizes our governing bodies to intervene to protect “the common welfare”. To me, that is the origin and just purpose of our land use commissions – to protect and preserve the historic values and unique character of our town and the neighborhoods within it. I believe in private enterprise and capitalism, but I do not believe that I was elected to this position by people who held in their hearts the fervent hope that I would vote to put a bar, a restaurant, a spa and all of their inherent traffic, noise, lights, and congestion in their backyards.

Since 1978 our regulations have prohibited inns on town roads. When one member of this commission expressed the personal opinion that the language of the regulation was vague, we clarified it to make the intent absolutely clear so that no other potential developer could argue that he/she had been misled. That should have ended this sad saga but instead it was just the beginning of a new chapter. Why was that? Why has this controversy dragged on dividing neighbors, disrupting friendships, besmirching the reputations of honorable people, and even tainting an election in our otherwise idyllic town? It is the elephant in the room. We need to put a stake through the heart of this issue now and lay it to rest so that a more appropriate and beneficial use can be found for that unnamed vacant and decaying property – a use that is more in keeping with the real needs of our townspeople and consistent with our shared values as reflected in our Plan of Conservation and Development.

Clear regulations allow developers to realistically assess the potential of a property. A vote against this proposed change will provide them with those clear regulations so that they will know up front what is required and allowed. It might also help to remove any lingering perception that our elections and our commission votes might be for sale to the highest bidder.

The good work of the commissioners who served before us needs to be honored. This proposal to change our regulations to allow the construction and operation of such large scale commercial enterprises - inns, bars, restaurants, and spas - on the town roads that run through our quiet neighborhoods must be defeated.

Arthur J. DuBois, Jr.
Alternate to the Zoning Commission
July 26, 2010

Memorandum

TO: Washington Zoning Commission
FROM: Andy Shapiro, alternate
RE: Ten Reasons to Reject Proposed “Inn” regulations
DATE: 25 July 2010

Introduction. The proposed inn regulations should be rejected or withdrawn pending further consideration. They pose too great a gamble. And since the stakes are the Town’s character, it is not worth taking. What began months ago as an attempt simply to define a single term, “inn,” has expanded into a much more ambitious and potentially harmful exercise in reformulating the character and the future of the vast majority of Washington. This is not the time for radical change that the whole Town may soon regret. Here are ten reasons why we should not vote to adopt the proposed inn regulations.

[1] Planning Commission vote. By unanimous vote, the Planning Commission ruled that our proposed inn regulations are “fundamentally incompatible” with “the pre-eminent goal” of Washington’s 2003 Plan of Conservation and Development (POCD), namely, preservation of Washington’s prized asset, its “rural character.”

[2] Zoning’s relation to Planning. The Planning Commission decision does not dictate how we act, but it should give us serious pause for two reasons, both written into our Zoning Regulations: (1) We state “These Regulations are intended to promote effectively the Town’s Plan of Conservation and Development” (Regs. Sec. 1.3); and (2) Before a Special Permit for an inn may be granted, the Zoning Commission must find “that the proposed use and any building or other structure in connection therewith are consistent with the objectives of the Plan of Conservation and Development for the Town of Washington...” (Regs. Sec. 13.1(b)(1)). Question: If, despite the vote of the Planning Commission, we adopt of our proposed inn regulations, will we not wind up violating the intent of the POCD and our own regulations every time we grant an application for an inn?

[3] Lack of conformity with the ‘comprehensive plan.’ The Plan of Conservation and Development is not the only plan we must be concerned with. There is also the so-called comprehensive plan, the overall scheme for land use and development that resides in our entire zoning regulations and zoning map. The Connecticut General Statutes prescribe that zoning regulations like Washington’s “shall be made in accordance with a comprehensive plan” (CT. Genl. Stat. 8-2). Any changes to these regulations, like our proposed inn amendments, must also be in accordance with this comprehensive plan. Conformity with a comprehensive plan is legally required for the obvious reason that it prevents the arbitrary, unreasonable, and possibly discriminatory exercise of the zoning power. Our proposed inn regulations do not satisfy this salutary principle of conformity with the comprehensive plan. In several important aspects, they directly conflict with the “intent and requirements” of other Zoning Regulations already on our books. Three illustrations of this nonconformity follow in points [4], [5], and [6].

[4] R-1 ‘rural character.’ Permitting high-intensity commercial enterprises, like multi-function inns, to intrude on the R-1 district conflicts

with the core concept underlying that residential zone, which is dedicated to low-intensity uses “that will retain the rural character and natural beauty of the Town” (Regs. Sec. 4.1). This key aspect of our proposed inn regulations does not conform to our comprehensive plan.

[5] ‘Home occupation’ restrictions. Permitting high-intensity commercial enterprises, like multi-function inns, to intrude on the residential district contradicts the extreme solicitude shown by our regulations toward protecting homeowners from the adverse impact of relatively small-bore “home occupations” next door (Regs. 12.6). As I pointed out in my memorandum of Feb. 22, 2010, only so-called quiet businesses can be run out of homes in the residential district, e.g., accounting, psychotherapy, law. More commercial uses, like barbershops, dancing schools, and karate schools are prohibited. Stores are prohibited. Restaurants are prohibited. Traffic, storage, and delivery of goods are carefully restricted. These are all indications of how our comprehensive plan protects residential neighborhoods from undue commercial intrusion. The proposed inn regulations do not conform to these detailed aspects of our comprehensive plan.

[6] Room size limitations. Permitting inns of an indeterminate size deviates from our regulatory scheme of limiting similar facilities to a specific maximum size: e.g., B & B’s (3 rooms), rooming houses (10 rooms), convalescent homes (10 beds per acre), and general home occupation (33% of total finished floor area). Clearly, the intent behind our comprehensive plan is to impose a ceiling, some maximum limit, on the size and scale of commercial structures in the residential district. The proposed inn regulations, facilitating as they do inns of indeterminate size, do not conform to our comprehensive plan.

[7] Custom of limited inns. Permitting inns to be multi-function hotel-restaurant-bar-spa-gym-conference-centers departs from Washington’s long-standing custom of inns functioning solely as places of overnight accommodation and maybe meals—the sole exception to this custom being the unique case where the Zoning Commission permitted the Mayflower Inn to expand and diversify on state highway 47.

[8] Mayflower: the exception, not the rule. Permitting inns to be multi-function hotel-restaurant-bar-spa-gym-conference-centers distorts one specific case, the Mayflower Inn, into a general rule and model for all future inns, even though we know that the Mayflower, like all other Special Permits, “should be considered as an individual case,” not as a precedent for anything (Regs. Sec. 13.1(a)). Remember: the Mayflower was a long-standing pre-existing use, located on a busy state highway, and abutting a large institutional land use, namely, the Gunnery School. It was not dropped in the middle of an unsuspecting residential neighborhood, as could happen under our proposed inn regulations. There is no requirement—indeed, no good reason—why the Mayflower Inn’s parameters should be adopted by us as the legal poster child for future inns in our Zoning Regulations.

[9] Not on all roads. Allowing inns to be located on any road, town or state, anywhere in the R-1, R-2 and R-3 zones exposes all of Washington’s most scenic roads—many of them narrow, winding, unpaved, and enjoyed by walkers, joggers and bicyclists—to the danger and noise of increased traffic to and from inns. This is not rational. More rational, though still imperfect, would be the current system of limiting inns to state highways. Most rational would be to permit inns on roads—be they town or state—that will both accommodate inn traffic, as well as leave unspoiled Washington’s rural character. As it happens, a rational, well-thought-out designation of Washington’s roads sits on our bookshelves, awaiting our use. It’s contained in the Natural Resource Inventory Report and Recommendations, compiled in 2000 by the then Washington Ad Hoc Conservation Committee. The Committee evaluated Washington roads across a spectrum of 14 criteria (including unpaved, winding, narrow, steep, views, etc.) In general, roads that satisfied eight or more of these criteria were designated as scenic: “The scenic nature of these roads helps to define the character of the Town,” wrote the Committee, “and enhances the general quality

of life for residents and nonresidents alike. If scenic roadways are inappropriately developed, the ambiance of Washington is in danger of being destroyed” (Report at p. 31). It’s highly instructive that on July 8, 2010, the current Conservation Commission—successor to the Ad Hoc Conservation Committee—voted that the Zoning Commission’s proposed inn regulations are “not consistent with the Natural Resource Inventory Report.” Rather than arbitrarily throw open all roads in the Town’s residential districts to future inns, the Zoning Commission should be far more discriminating. It should exempt certain highly vulnerable roads—again, be they town or state—from the inappropriate demands that would be made on them and their residents, as well as on travelers, if they were exposed to the intense commercial development that inns involve. The recommendations made in the Natural Resource Inventory Report, for example, might provide a well-researched rational basis for locating future inns in Washington.

[10] Special Permit standards are too vague. It is wishful thinking—and bad legislating—for us to rely on our vague Special Permit standards (Regs. Sec. 13.1) to supply, on an ad hoc basis, the necessary limitations regarding the size, scale, and impact of inns on all of our residential neighborhoods. Our Special Permit standards are subjective and general, offering minimal guidance for sound decision-making. Special Permit standards may serve us adequately while inns are restricted to state highways; they will not be up to the task if the whole Town is opened up to inns. Then, Special Permit standards will lead to arbitrary decisions, depending not on predictable rules, but on unpredictable people, who happen to be zoning commissioners at the time. Such decisions may not stand up in court. Also, relying on vague Special Permit standards will deprive property owners of certainty about how they can use their land, as well as how neighbors can use theirs, because the size, character, and operations of inns will be highly unpredictable, until each individual application is finally resolved.