

August 26, 2002

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

ALTERNATE PRESENT: Mr. Abella

MEMBER ABSENT: Mr. Fitzherbert

ALTERNATES ABSENT: Mr. Brinton, Mr. Shapiro

STAFF PRESENT: Mrs. Hill, Mrs. Luckey

ALSO PRESENT: Mr. and Mrs. Boyer, Mr. Sears, Atty. Andrews, Mr. Talbot, Mrs. Werner, Ms. O'Rourke, Mr. Piscuskas, Ms. Zelenko, Mr. Boling, Mr. Anderson, Press

PUBLIC HEARING

Revision of the Zoning Regulations/Sections 13.1.B and 2.3.1

Mr. Martin called the public hearing to order at 7:33 p.m. Ms. Page read the legal notice published in the **Waterbury Republican** on 8/14/02 and 8/22/02. Members Friedman, Martin, Owen, and Page were seated and Alternate Abella for Mr. Fitzherbert.

Mr. Martin reviewed the list of documents in the file. (See attached list.) He read the 7/18/02 comments from the Northwestern Ct. Council of Governments and an excerpt from pp. 4-5 of the 8/6/02 Planning Commission minutes. Regarding proposed Section 13.1.B the Planning Commission thought the wording was vague, but Mr. Martin noted the current wording was more vague and the proposed language would tighten it up. Regarding proposed Section 2.3.1 the Planning Commission was concerned about enforcement. It was noted Planning did not object to either of the proposed revisions.

Mr. Martin briefly reviewed the proposed revisions. Changes to Section 13.1.B, standards for Special Permits, were recommended by Atty. Byrne to better align it with recent court cases and to add clarity. He noted a few minor editorial changes had been made since the last meeting and were shown on the sheet, "Proposed Amendment to the Washington Zoning Regulations Revised Draft - August 26, 2002." There were no questions or comments from either the Commissioners or the public concerning 13.1.B.

Mr. Martin read the current and proposed sections 2.3.1. He stated the land use attorney had advised the Commission it could not stop the transfer or recording of non conforming parcels, but it could refuse to issue zoning permits on parcels that were not in compliance with the Zoning Regulations. There were no questions from the Commissioners. Mr. Talbot asked if after the regulation was adopted if a small non conforming parcel had been cut off from a larger parcel, would the combination of both parcels be reviewed prior to the issuance of a zoning permit. Mr. Talbot also asked if there was an existing conforming 50 acre parcel and a small non conforming parcel was cut off but the remainder of the original parcel was still in compliance, could a permit be issued for a proposed activity on the large conforming lot. Mr. Owen and Ms. Page thought the wording of the proposed regulation was confusing and that it said there could be no permit issued in this case, however Mr. Martin thought it was clear there would be no jeopardy to the 50 acre lot as long as it had been in compliance before the second lot was transferred. A lengthy discussion followed. The Commissioners thought it was clear that when the original parcel was non conforming and a small non conforming parcel was cut off to make the larger parcel conforming, a zoning permit could not be issued for

either parcel. However, there was a difference of opinion about whether a zoning permit could be issued for the larger parcel when it was conforming both before and after the small non conforming parcel was transferred. Mr. Martin noted this was the wording drafted by Atty. Byrne who said it would prevent a situation similar to what occurred on Old North Road from happening in the future and that the Commission could indicate non compliance on the Land Records if it chose to. He also said it was difficult to draft a regulation to address every possible situation that might come up. Atty. Andrews suggested this type of property transfer might be better addressed by redefining "lot line revision" in the Regulations. Mr. Martin noted the Commission could continue the public hearing to have further dialogue with its attorney or enact the proposed regulation as it was an improvement over the existing section. There was a discussion about whether Section 13.1.B could be voted on separately while 2.3.1 was further researched as one public hearing was held for both. In the future a separate hearing will be conducted for each proposed revision. Mr. Owen suggested modifying the proposed revisions to Section 2.3.1 by eliminating the unclear portion, paragraph c. It was the consensus to do this. Mr. Martin explained 2.3.1 included the requirement that a zoning permit be issued for lot line revisions as a result of coordination with the Planning Commission who had brought it to Zoning's attention that under the state statutes Planning was not authorized to act on them.

MOTION: To close the public hearing to consider the proposed revisions to Sections 2.3.1 and 13.1.B of the Washington Zoning Regulations. By Ms. Page, seconded by Mr. Owen, and passed 5-0.

Mr. Martin closed the public hearing at 8:14 p.m.

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

REGULAR MEETING

Regular Business

Mr. Martin called the meeting to order at 8:14 p.m. and seated Members Friedman, Martin, Owen, and Page and Alternate Abella for Mr. Fitzherbert.

Consideration of the Minutes

MOTION: To accept the 7/22/02 Regular Meeting minutes as written. By Mrs. Friedman, seconded by Mr. Abella, and passed 5-0.

Other Business

Revision of the Zoning Regulations/Sections 2.3.1 and 13.1.B

It was the consensus to approve the revised 8/26/02 draft of Section 13.1.B and paragraphs a and b of proposed Section 2.3.1.

The Commission will continue to work on paragraph c. These revisions will become effective two weeks after the publication date of the legal notice.

MOTION: To approve the proposed changes to the following sections of the Washington Zoning Regulations:

1. Section 13.1.B per the revised 8/26/02 draft
2. Section 2.3.1, proposed sections a and b only.

By Ms. Page, seconded by Mr. Owen, and passed 5-0.

New Application

Washington Community Housing Trust/16 Church Street/Special Permit: Section 13.15/Affordable Housing

Mr. Talbot, Mr. Sears, and Mr. Boyer were present on behalf of the Housing Trust. Mr. Martin noted an incomplete application had been submitted and said the Commission generally requires Health Department approval prior to scheduling a public hearing. Due to the technical application requirements such as publishing of a legal notice for the hearing, notification of adjoining property owners, and the statutory time limits for consideration of the application, he recommended the application be returned to the applicant and submitted when Health Department approval is obtained. He said the Commission would promptly schedule a hearing upon receipt of a complete application and that the review process would not be slowed down. It was also noted Zoning had not formally heard from Inland Wetlands about whether a formal Inland Wetlands application would be required. Mr. Martin asked Mrs. Hill to request a report from the Inland Wetlands Commission. Mr. Martin referred the applicants to Section 13.1.B of the Zoning Regulations and advised them that the requirements of this section must be addressed at the public hearing. The Housing Trust agreed to withdraw the Special Permit application and to submit it when Health Department approval is obtained. The application was returned to them.

Mr. Talbot also asked if the Commission was in the process of working on a definition for lot coverage. Mr. Martin stated a subcommittee comprised of Zoning and ZBA Members would be set up to review this matter and come up with a common methodology including a definition and how to measure coverage.

Other Business

Update/Sprint/Telecommunications Facility/New Milford

Mr. Martin noted the Commissioners had all received a copy of Atty. Zizka's 7/25/02 letter regarding the proposed tower at 399 Chestnut Land Road, New Milford, in which he detailed the Commission's concerns to Sprint. Sprint has not yet submitted an application to the Ct. Siting Council. Mr. Martin said there had been a well done article in the **Litchfield County Times** that included the rationale for the Commission's proactive approach regarding possible future cell tower projects in Town as well as this particular proposal. He reported a committee with representatives from the land use commissions had been set up by the Conservation Commission to look into the most appropriate locations for telecommunications towers in Town.

Revision of the Zoning Regulations

Section 14 - Site Plan Requirements: The Commissioners had received a complete rewrite of this section and were asked to review it for the next meeting. Mr. Martin explained regulations regarding drainage and runoff was the Commission's main goal this year, that the revision

process had begun in February with a workshop by NEMO, and that Mr. Oley of Land Tech had done a thorough rewrite based on his own experience and a comparison of similar regulations in other towns. Mr. Owen asked if adoption of the revisions would result in increased application costs. Mr. Martin did not think there would be much of an increase because projects requiring site plan submission already require the services of an engineer. Referrals will be sent out to the other land use commissions with a request for responses by the September 23rd meeting. At the September meeting the Commission will decide whether to schedule a public hearing for November.

Section 12.14 - Generators, Air Conditioners, Pool Filters, and Other Noise Generating Equipment: Mr. Martin said he had talked with Mr. White, ZBA Chairman, and there was mutual agreement to revise the draft revisions to allow for the status quo of the roles of the two commissions. This could be easily accomplished by deleting sections .5 and .6. Sections .1 - .4 would provide dimensional relief and would continue to have the ZBA be the organizations that grants variances. Three minor edits were made: 1) in .3, strike out the word, "yard," 2) in .4, strike out the word, "all" and insert "any," and 3) in .4 add "also" to read, "... enclosure is also a structure."

Section 17 - Non Conforming Lots, Land, Structures, and Uses: Again, Mr. Martin stated that in an effort to achieve coordination between Zoning and the ZBA, the proposed changes to Section 17 should maintain the status quo for the roles of the two commissions. Therefore, the deletions proposed by Atty. Byrne to bring this section up to date would be considered. The additional wording, however, regarding how to provide flexibility for non conformities would not be considered at this time. Mr. Martin said he continues to be concerned about any proposed wording that would increase the Zoning Commission's already great workload.

Section 18.1.3: This proposed change to the Zoning Regulations would also maintain the status quo and is consistent with the state statutes and with Town policy. Mr. Martin said he had discussed this matter with Mr. Solley, past ZEO and ZBA Chairman, Mr. White, current ZBA chairman, and Mrs. Hill, current ZEO, and no one could recall a use variance ever having been considered or approved. Mrs. Hill stated that she has always advised applicants that it is not possible to apply for a use variance. Mr. Martin thought it was in the Town's best interest to clarify in writing what is already actual Town policy. It was noted this is consistent with the Plan of Development, would protect the Town, had been recommended by the Commission's land use attorney. It was the unanimous consensus of the Commissioners to go forward with this proposal.

Public hearings for these three sections will be scheduled for October 28, 2002

Privilege of the Floor

Ms. Zelenko and Mr. Piscuskas were present to discuss the possibility of moving their light manufacturing business to Woodville. They had previously received a Special Permit for their business in an existing building in the Depot Business District, but the sale of the property had not been completed. The Regulations were reviewed and it was determined this was not a use permitted in Woodville. The two said they were exploring their options, and asked if it would be possible to move the business to Marbledale. They were advised that this would be possible and that the Regulations for the Marbledale Business District were flexible and could provide options for applicants.

Other Business

The 8/21/02 Planning Commission Special Meeting to discuss the Conservation section of the Plan of Conservation and Development with

the Conservation and Inland Wetland Commissions, Steep Rock, and other invitees was briefly reviewed. It was noted Mr. McGowan of the Lake Waramaug Task Force had attended and had presented a list of recommendations for Lake Waramaug including that the Zoning Commission increase its setback from the lake. Mr. Martin pointed out that although the Inland Wetlands Commission wants the Zoning Commission to retain the current Section 12.1, Atty. Byrne had advised that it is not enforceable because it is in the jurisdiction of the Wetlands Commission, not Zoning. It is unlikely, therefore, that Zoning would act to increase the current setbacks. Mr. Martin summarized the discussion regarding preservation of natural resources, open space, historic resources, and community character and spirit. He noted that Development is the next section of the Plan to be worked on and that the Zoning Commission would be invited to take part in that discussion. Regulations regarding lighting were also discussed. This is an issue that was raised in the Conservation section, but will be addressed under Development.

Copies of the 2001-2002 annual report were circulated.

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

Mr. Martin adjourned the meeting at 9:24 p.m.

FILED SUBJECT TO APPROVAL

Respectfully submitted,

Janet M. Hill, ZEO