

## September 21, 2009

**Present:** David Owen, Valerie Friedman, Gary Fitzherbert, Ralph Averill

**Alternates Present:** A.J. DuBois, Andy Shapiro, Harry Wyant

**Absent:** Lou Abella

**Staff Present:** Janet Hill, Shelley White

**Others Present:** Randy Snook, Brad Sedito, Reese Owens, Todd Catlin, Rob Parker, Matt Klauer, Chris Charles, Residents

### REGULAR MEETING

Mr. Owen called the meeting to order at 7:30 pm.

Seated: Mr. Owen, Ms. Friedman, Mr. Fitzherbert, Mr. Averill, Mr. Dubois, Alt.

### Consideration of the Minutes

Corrections:

Page1:

Under 2nd Public Hearing: should read: Revision of the Zoning Regulation(s)/Section 6.4.13 to allow accessory structures used to operate or maintain a pre existing golf course by special permit....

Under 3rd Public Hearing, last sentence before Motion: should read: There were no questions or comments.

Page 3:

Under Privilege of the Floor, 2nd sentence, should read: He stated the basic idea would be to revise Section 12.14.5 to say “under certain circumstances this equipment can be placed farther away and if the distance between the proposed equipment location and the nearest building line is greater than 250 feet, the maximum spacing would increase by 1 foot for every 10 feet additional separation, up to a maximum of 100 feet.

Page 4:

4th sentence, should read: Mr. Owen asked that the Commission think about this and get back to him with any input.

Motion:

to accept the Zoning Meeting Minutes of August 24, 2009 as corrected, by Mr. Owen, seconded by Mr. Fitzherbert, by 5-0 vote.

Mr. Owen stated that he contacted Attorney Mike Zizka regarding posting the corrected minutes on the website. He stated that Atty. Zizka said that the original minutes posted subject to approval must stay on the website but that a separate corrected minutes could be posted as well but it is not necessary to do so. It was agreed by the Zoning Commission that the corrected minutes should be posted on the Town website.

**New Application(s)**

There were no new applications.

**Other Business**Revision of the Zoning Regulations:

Addition of Section 17.5.a./Special Exceptions for Section 12.1 under specific circumstances:

A Public Hearing has been scheduled for 7:30 p.m. on October 26, 2009, in the Land Use Meeting Room, Bryan Memorial Town Hall, to consider the Revision of Zoning Regulation Section 17.5.a.

Possible Revision of Zoning Regulation(s)/To Require Eating and Drinking Establishments in the New Preston and Washington Depot Business Districts by Special Permit:

Ms. Friedman stated that at the August 24th Zoning Commission meeting she distributed a memo listing 12 reasons as to why the Zoning Regulations for eating/drinking establishments for all four business districts should be revised. She discussed the history as to why eating/drinking establishments are uses permitted by a special permit in Marbledale and Woodville. In 2001 the regulations were revised for Marbledale and more recently, Woodville and the Zoning Commission had talked about doing this for the The Depot and New Preston but never got around to it. Ms. Friedman handed out a draft of the proposed deletions and additions to Sections 7 - B1 New Preston Business District, Section 8 - B2 Washington Depot Business District, Section 9 - B3 Marbledale Business District, and Section 10 - B4 Woodville Business District.

Mr. Shapiro asked if there was a definition of an Eating/Drinking Establishment. Ms. Friedman stated there is not and if the regulations were streamlined there would only be the need to define it once, as it would mean the same for all four business districts.

Mr. Averill stated that he agreed that uniformity and a definition for eating/drinking establishments is important. Mr. Shapiro stated that he would be in favor of holding a public hearing that would allow input regarding issues such as hours, lighting, and noise.

Mr. Fitzherbert stated that he was not convinced that these revisions were necessary. He stated that, in his opinion, that if a business is "wanted and they're good, they will last." Mr. Shapiro stated that if Mr. Fitzherbert's statement was correct that it would make it possible for certain businesses to exploit the space in town for other kinds of uses that the town would not be happy with.

Mr. Wyant stated that he thought it would be beneficial to standardize the regulations for the four business districts in Town.

Mr. Averill, referring to Mr. Fitzherbert's previous statement, stated that a franchise business could open on the well-traveled Route 202 and be very successful; yet, the patrons would not necessarily be from Washington. However, the Washington residents would be stuck with it. Mr. Owen stated that the regulations could not keep a franchise out but regulations could add an extra filter. Mr. Fitzherbert stated that he is a firm believer in "business takes care of itself."

Mr. Owen stated he would be in favor of holding a Public Hearing if that were what the Commission wants to do.

Mr. Dubois stated Mr. Fitzherbert's comment on "letting business take care of itself" would put the other existing businesses in Town at risk. Ms. Hill stated the criteria is listed in Section 13 under the Special Permit Criteria and it wouldn't be anything specific to restaurants but it would be specific to the Town's Special Permit Section.

Ms. Hill stated that the Zoning Commission would reinforce the application of these criteria to an eating/drinking establishment when a business is applying for a Special Permit.

Motion:  
to schedule a Public Hearing on November 23, 2009 to consider the Revision of Zoning Regulations for Eating and Drinking Establishments in the New Preston and Washington Depot Business Districts by Special Permit,  
by Mr. Owen, seconded by Mr. Dubois, by 4-0-1 vote.  
Mr. Fitzherbert abstained because he did not feel it was necessary to revise these regulations.

Discussion Re: Special Exceptions for Generators and Other Noise Generating Equipment:

Mr. Owen asked for the Commissioners input on his proposed language for section 12.14 which had been circulated at the last meeting.

Ms. Friedman stated that she did not know enough to comment as to whether or not the numbers were accurate. Mr. Fitzherbert stated that he agreed with Mr. Owen's calculations.

Mr. Shapiro asked for clarification of the definition of a Building Line. Mr. Owen read the definition.

Mr. Averill explained it as "the line within which you can build a building and outside of which you cannot build a building."

Ms. Friedman asked if any neighbors have complained about any of the generators installed since the adoption of special exceptions. Ms. Hill stated that she does not know of any complaints.

Mr. Owen stated his issue is that the ZBA has been applying a standard, which is not in the Zoning Regulations. He did state that the regulations could be revised to include these guidelines.

Brad Sedito, Chairman of the ZBA, discussed the history of the Special Exception. He stated that the ZBA received special exception applications that were easy to confirm that the proposed location of the generator would have less impact than placing in within 25 ft. of the structure served. However, there were cases that had large parcels of land and due to the topography of the land it was difficult to determine the impact of the noise from the generator on the neighboring properties.

Mr. Owen stated the Zoning Commission has considered ways to deal with this but did not want to lose the simplicity of the regulation. He stated the existing regulation could be enforced with a measuring tape and the owner would be the person most impacted and would most

likely take the precautions to make it less noisy.

Reese Owens, Architect, stated that there are many variables to consider when sensibly locating a generator. He stated that he believes that the ZBA has done a good job considering these variables and he thinks the Special Exception should be reinstated.

There was a short discussion regarding the installation of a generator at the Rumsey Hall Hockey Rink.

Mr. Sedito read a prepared statement on behalf of the ZBA (on file in Land Use Office). His letter discussed the five-year history of the ZBA dealing with the Special Exception for Noise Generating Equipment and expressed that the ZBA would like to work with the Zoning Commission in reinstating it.

Mr. Sedito stated that the ZBA and Zoning Commissions knew from the beginning of the institution of the Special Exception that approvals would be subjective and a revision of the regulation would be required eventually.

Mr. Owen stated that ZBA should proceed with rewriting section 12.5 and come back to Zoning with the proposed revision.

Mr. Catlin stated that the ZBA has found that sound is an inexact science and regulating it exactly would be difficult and he asked that the Zoning Commission provide some guidance as to how there could be some flexibility.

Mr. Owen stated that the regulation should have language that can be defined so that it is clear to the applicant. There was a discussion regarding decibel levels and enclosures for generators.

### **Privilege of the Floor**

Mr. Sedito brought up the issue of windmills in the Zoning Regulations. Mr. Owen stated that it is something to consider.

Mr. Chris Charles read a letter discussing the topic of Inns, dated September 21, 2009 (on file in Land Use Office). His letter recommends that there be a concerted effort to define what an 'Inn' is, which would stimulate a further discussion regarding the future of the Town of Washington. He proposed that the Board of Selectmen "charge the Planning Commission to appoint an Ad Hoc Committee" to discuss issues such as Energy Conservation and Carbon Emissions, the implications of a Total Real Estate Build Out, housing issues, schools, etc.

In response to Mr. Charles's letter, Mr. Fitzherbert stated he had a firm look at the Wykeham Rise property and that it had been deteriorating, internally prior to the current owner. Mr. Charles stated that he was referring to the exterior of the property. Ms. Hill stated she would email a copy of Mr. Charles's letter to the Zoning Commissioners.

Mr. Fitzherbert stated that he heard that there are major changes at the State level regarding septic systems. He stated that the State has reduced their requirements by 50% by using engineered septic systems. Mr. Fitzherbert asked if the statewide 50% reduction would have an impact on the Town of Washington's density requirements. Mr. Owen asked that Mr. Fitzherbert summarize his concerns and send them to Janet Hill and she would ask Attorney Mike Zizka. Mr. Charles stated the defense for the Town would be the protection of the water supply.

Mr. Rob Parker commented that he understood that the Zoning Commission's purpose was to preserve the town through the institution of its Zoning Regulations. He questioned whether the Town of Washington's Zoning Commission was trying to make things less regulated. Mr. Owen stated that this was the first time someone had thought that the Zoning Commission was not strict.

Mr. Fitzherbert stated that the Zoning Commission is to regulate the Zoning Regulations based on some kind of plan. Mr. Owen stated that it was not the number of regulations, but rather what they said that was important and that a town like New Milford is the 'direct product' of New Milford's Zoning Regulations.

Mr. Parker stated that he was impressed by the job the Zoning Commission does in the Town of Washington. Mr. Parker stated that he took offense to Mr. Fitzherbert's suggestion at the July 27th Zoning Commission Meeting, that the Zoning Commission was not fair and did not do its job regarding the Wykeham Rise application.

Mr. Owen stated that the idea behind zoning regulations is "I give up a little bit of control over my property in order to gain a little bit of control over your property. It's the balancing of neighbor's interests."

### **Communications**

There were no communications to discuss

### **Enforcement**

Ms. Hill summarized the ZEO Report dated 9/21/09 and stated she would email the report to the commissioners.

### **Adjournment**

Motion:

to adjourn at 8:45 pm by Mr. Owen, seconded by Mr. Averill, by 5-0 vote.

Mr. Owen adjourned the meeting.

FILED SUBJECT TO APPROVAL:

Shelley White, Land Use Clerk

