

Zoning Commission

MINUTES

Public Hearing - Regular Meeting

August 22, 2016

7:30 p.m.

Main Level Meeting Room

MEMBERS PRESENT: Mr. Solley, Mr. Reich, Mr. Werkhoven
MEMBERS ABSENT: Mr. Averill
ALTERNATES PRESENT: Mr. Burnham, Mr. Solomon
ALTERNATES ABSENT: Mr. Sivick
STAFF PRESENT: Mrs. Hill, Ms. Pennell
ALSO PRESENT: Mr. Szymanski, Atty. Fisher, Mr. Lasar,
Mr. Lopez, Ms. Holiman, Ms. Allen, Mr. and
Mrs. Greco, Ms. Sutter, Mr. Ciarlone, Mr.
Hollinger

Mr. Solley called the Public Hearing to order at 7:32 p.m. and seated members Solley, Reich, Werkhoven and Alternates Burnham and Solomon.

PUBLIC HEARING:

GSN, LLC./214 West Shore Road/Special Permit: Sect. 6.5 Addition to Existing Dwelling within 50-75 feet of Lake Waramaug

Mr. Solley read aloud the Administrative Review, dated 08-22-16 by Mrs. Janet Hill, noting all documents have been submitted for the file.

Professional Engineer from Arthur Howland & Associates representing the applicant, Mr. Paul Szymanski, reviewed the Site Development Plan dated June 21, 2016, sheet SD.1. He stated this proposed plan calls for a second story addition on a portion of the existing single family home. The Applicant had been required to get a variance from the Zoning Board of Appeals (ZBA) to increase the height of the structure within the Zoning setbacks. Mr. Szymanski reported that ZBA stated it was well done as plans are to only take up a small portion of the second floor. He stated there is an existing finished space on the second floor. He further noted that there will be a small deck off the rear. Mr. Szymanski discussed the storm runoff and the rain garden, as well as native vegetation plantings that will go in and around it. He noted that Inland Wetlands has approved this application.

Mr. Solley asked if the public had any questions. Mr. Hollinger asked if the Health Department checked to be sure there was an alternate location for a septic field on this property. Mr. Szymanski explained and cited the Health Codes that mandate whenever a property owner adds on or builds up or out on his property, they do soil testing and demonstrate that there is a co-compliant reserve area.

Board members asked questions regarding drainage and rain water runoff. Mr. Szymanski explained that the runoff will infiltrate on applicant's property and will be directed into the rain garden.

Mr. Solley asked if there were any further questions. None were noted.

MOTION: To close the Public Hearing for GSN, LLC./214 West Shore Road/Special Permit: Sect. 6.5 Addition to Existing Dwelling within 50-75 feet of Lake Waramaug. By Mr. Werkhoven, seconded by Mr. Reich. Passed 5-0 vote.

Harker/248 West Shore Road/Special Permit: Section 6.4.6/Fence on Lake Waramaug Side of West Shore Road:

Mr. Solley read aloud the Administrative Review dated 08-22-16 by Mrs. Janet Hill. Zoning Enforcement Officer, Michael Ajello, submitted an enforcement report, which included a report about a violation regarding this application involving the unauthorized fence construction. Mr. Harker, applicant, after receiving a letter of zoning violation, applied for the Special Permit for the fence per Section 6.4.6. Mr. Solley read this Zoning regulation aloud for the record. Mr. Ajello also reported that he met with Mr. Terry Phalen of the State of Connecticut Department of Transportation (DOT). Mr. Phalen confirmed that the DOT has allowed the fence encroachment on the state right of way to remain as it is located reasonably far from the paved roadway, is impermanent in nature, and represents no traffic or other hazard.

Mr. Solley read aloud two letters received in opposition to this application. An email dated August 18, 2016 was received from the Lake Waramaug Association. A letter was received on August 22, 2016 from Ms. Betty Sutter, an adjoining property owner. Copies are in the file.

Mr. Ciarlone, agent representing the applicant, submitted a copy of a photo he took of the fence at 248 West Shore Road. Mr. Solley noted that this photo shows that most of the length of this fence exceeds the height limitation of 2 ft. measured

perpendicular from the center line of West Shore Road. Mr. Solley stated that this is against the Zoning Regulations unless the Commission finds that the view of the lake from the road is not unduly obscured by the fence.

Mr. Solley noted for the record that an adjoining property owner has a fence as tall as the one proposed in this application and is in part, shown in the photo that Mr. Ciarlone had presented. This fence was installed a few years ago and was approved by the Commission because it was determined it did not unduly obscure the view of the lake.

Ms. Sutter, who wrote one of the letter's in opposition to this application, said she resides across the road from the applicant. She stated that she feels this fence is distasteful and defies the rules of the State Scenic Road designation in that it hides the vegetation, the house, and part of the lake. With regards to questioning who sent the letter from the Lake Waramaug Association, Ms. Sutter stated the email would be from the Co-Presidents, Ann Block and Gail Berner. Mrs. Hill stated that she receives the Association's email correspondence from an individual named Carolyn. The Commission had questions regarding who this correspondence is actually from and whether it is the opinion of the entire Association. Ms. Sutter stated she feels it is. The Commission stated that correspondence should be signed in the future.

Ms. Shauna Holiman, residing at 125 West Shore Road, stated that hedges should fall under the same regulations as fences. She feels this should be done as they act as a wall and some residents who have these hedges, do not keep them trimmed to the regulated height. She gave a history of what occurred when she followed the necessary regulations in putting up a fence on her property. She stated that after what she had gone through, if an applicant is approved to put up a 4 ft. fence she would be upset because she thought residents should be treated in a consistent manner. With regards to the hedges, Ms. Holiman stated that a neighbor along West Shore Road put up a hedge, which has now grown to 6-7 ft. in height and obstructs her view of the Lake. Ms. Holiman also detailed problems due to plants installed along her side boundary line by her neighbors. In closing, Ms. Holiman stated with these new changes occurring on the lake involving new property owners wanting to build big homes and take as much square inch as they can, encroaching on abutting property owners, is a concern that requires regulation by Zoning and she hopes to see this happen.

In response to Ms. Holiman's comments, Mrs. Hill stated for the record that Ms. Holiman's application to put up a fence was probably approved in the mid to late 1990's. Mrs. Hill pointed out that the regulations regarding fences near the lake were added in about 2002 and so there may be fences that are grandfathered in. Mrs. Hill read the current definition of fence in Section 6.4.6 that includes hedges, and so noted that hedges are now regulated on the lake side of the West Shore Road. Mrs. Hill advised Ms. Holiman to contact the Zoning Enforcement Officer to report any violations she sees. Ms. Holiman stated she is certain Mr. Ajello knows of these violations and nothing has been enforced.

Ms. Heather Allen, resident in Town and her family owns property on the lake in the Warren, stated that she does feel the proposed fence is too high. She stated there are several violations on West Shore Road involving fencing and hedge regulations. Ms. Allen continued stating that when a fence goes in, it is almost certain a hedge goes in behind it, often growing above the fence. She wants these regulations enforced and they are not. Ms. Allen stated her upset over this obstruction of the view of the lake. She continued stating that it is destructive in many ways and if they are not enforced, it makes a mockery of the regulations, which are in place for good reason. Ms. Allen noted that the lack of enforcement impacts the lake, Plan of Conservation, and values of the Town's rural character for which the people of this Town have voted for. She implored the Commission to enforce the regulations and added that Town residents count on this to be done.

Mr. Ciarlone asked why was the neighbor's fence allowed and his client's fence might not be. Mr. Solley stated that he saw different conditions behind the neighbor's fence; that the neighbor's house and vegetation were already blocking the view of the lake, which was not the case on his client's property. He added, too, that the Harker fence had been erected without obtaining a permit.

Mr. Solley encouraged the Commissioners to inspect the fence and property if they had not already done so. Mr. Solley asked members if they would prefer to continue this Public Hearing in order for them to take a closer look at this property. Members were in agreement with this.

MOTION: To continue the Public Hearing for Harker/248 West Shore Road/Special Permit: Section 6.4.6/Fence on Lake Waramaug

Side of West Shore Road to September 26, 2016 at 7:30 p.m. at Town Hall Main Floor Meeting Room. By Mr. Solley, seconded by Mr. Burnham. Passed by 5-0 vote.

Whalen (Greco)/270 Litchfield Turnpike/Special Permit: Section 17.6.C/Change of Non Conforming Use/Retail to Professional Services/Animal Health Practice:

Mr. and Dr. Greco were present to address their application. Mr. Solley read aloud the letter submitted from Dr. Greco dated August 10, 2016, which clarified the intended use of this property and provided information to support this application. Mr. and Dr. Greco presented a revised site plan with handwritten revisions dated 08/22/16 showing the layout of the property, including well, septic field, lot coverage and proposed parking area. Dr. Greco noted that with regards to employees for her business, she will have no more than three staff members on site at any given time.

Mr. Greco explained that the existing driveway area is located 100% on state property and that they have no formal right away, easement, or lease agreement with the State to use it. He stated that this driveway is in very poor condition, with boulders and cracks throughout, making any repairs very difficult and very costly. Mr. Greco stated they are not comfortable in repaving State property. In addition, Mr. Greco stated that it is his understanding that Section 15.1 requires that parking for a business be located on the property itself. Mr. Greco showed on the map where the proposed new driveway and parking lot would be accessed from Rt. 202. Mr. Greco stated that if this application is approved by the Commission, they plan to pave the driveway and parking lot.

Upon member's questioning, Mr. Greco stated that he was advised by Mr. Michael Ajello that he did not feel they needed approval from the DOT for a new driveway cut as there is an existing driveway there now.

Mr. Solley asked if they plan on changing the building's entry. Mr. Greco stated they plan to close off the existing front entry and utilize the side entry. Mr. Greco explained that this will help in their floor plans as the waiting room can be near the restrooms, rather having to bring clients through the examination room. They would also like to install a fence along part of the front property line. He stated this would ensure clients will pull into the new parking area and enter the building from the side. Mr. Greco stated this also offers

safety for client's pets in the event they get away from their owners, although this is not a common occurrence. He believes this is a preventive measure as Rt. 202 is a busy road. Plans for drainage were discussed and there were no concerns.

Mr. Greco gave the history of this property involving an environmental impact study that was done by previous owner, Ms. Deborah Whalen. As a result of this study, an underground tank was discovered that had been used for kerosene. He stated the tank was removed, as well as a lot of soil. This tank had been located in front of the existing garage. Mr. Greco submitted a copy of the letter regarding the Soil Sampling Closure Report dated November 26, 2001, which was addressed to Ms. Whalen. He stated the well has tested free of pollutants and if any future testing is necessary, the Department of Environmental Protection will complete and pay for such testing. Mr. Greco stated it has been 15 years and there had been no problems with pollutants in the property's water, well, septic, or leaching field.

Mr. Solley inquired if the applicant is considering any plantings along Rt. 202 as a buffer. Mrs. Hill suggested plantings along Wilbur Road would be more important as there are homes in this area. Mr. Solley agreed with Mrs. Hill, suggesting plantings to screen vehicles in the parking area. Mr. and Mrs. Greco were in support of this suggestion.

Signage was discussed and Mr. and Mrs. Greco will abide by the R-1 District regulations currently in place.

It was noted that all certified mailings were sent to adjoining neighbors and no replies were received.

Mr. Solley asked if there were any public comments. None were noted. There were no further questions from the Commission members.

MOTION: To close the Public Hearing for Whalen (Greco)/270 Litchfield Turnpike/Special Permit: Section 17.6.C Change of Non Conforming Use from Retail to/Professional Services/Animal Health Practice. By Mr. Burnham, seconded by Mr. Werkhoven. Passed by 5-0 vote.

Lopez/295 New Milford Turnpike/Special Permit: Section 9.4.1.D/Addition to Restaurant and Installation of Exterior Stairs:

Mr. Oscar Lopez, applicant and Mr. Stephen Lasar, architect presented this application.

Mr. Solley read Mrs. Hill's 08-22-16 Administrative Review. Mrs. Hill added that the Zoning Board of Appeals has approved a variance for this application and the applicant submitted proof of notification to adjoining property owners.

Mr. Lasar presented Proposed Building Addition Site Plan dated March 26, 2016 by Brian E. Neff, licensed engineer, as well as floor plans dated July 27, 2016 completed by Mr. Stephen Lasar, architect. Mr. Lasar stated this application is for a 48 sq. ft. kitchen addition, as well as exterior stairs.

Mr. Lasar reviewed the plans with Commission members and addressed their questions. Mr. Werkhoven asked if this exterior staircase will be covered. Mr. Lasar responded that this is an issue the Building Department will address. Mr. Lopez stated that the two bedroom apartment on the second floor will remain.

Mr. Solley asked if there were any further questions from the Public or Commission members. None were noted.

MOTION: To close the Public Hearing for Lopez/295 New Milford Turnpike/Special Permit: Section 9.4.1.D/Addition to Restaurant and Installation of Exterior Stairs. By Mr. Werkhoven, seconded by Mr. Reich. Passed by 5-0 vote.

REGULAR MEETING:

Mr. Solley called the Regular Meeting to order at 9:30 p.m.

Seated: Members Solley, Reich, Werkhoven and Alternates Burnham and Solomon.

MOTION: To accept the Regular Meeting minutes from July 25, 2016 as submitted. By Mr. Werkhoven, seconded by Mr. Solley. Passed by 5-0 vote.

Pending Applications:

**GSN, LLC./214 West Shore Road/Special Permit: Sect. 6.5
Addition to Existing Dwelling within 50-75 feet of Lake
Waramaug:**

Commission members agreed this was a thorough application. Mr. Solley stated the applicant showed consideration of Lake Waramaug, the second floor addition does not affect lot coverage, and the proposed plantings are adequate.

MOTION: To approve the Special Permit application Section 6.5 submitted by GSN, LLC for an Addition to Existing Dwelling within 50-75 ft. of Lake Waramaug and a rain garden at 214 West Shore Road per 1.) "Site Development Plan", by Arthur H. Howland and Associates revised to 07/25/16 and 2.) Architectural plans by Peter Talbot, AIA Architects revised to 11/10/15. By Mr. Werkhoven, seconded by Mr. Solley. Passed by 4-0-1 vote. Mr. Solomon abstained because he had not listened to the tape of the Public Hearing.

**Whalen (Greco)/270 Litchfield Turnpike/Special Permit: Section
17.6.C/Professional Services/Animal Health Practice:**

Mr. Solley suggested conditions of approval for this application should include, if required, Department of Transportation approval for the driveway cut on the State right away. Mr. Solley also suggested another condition to require that proper buffering be installed between the propose parking area and Wilbur Road.

MOTION: To approve the Special Permit application Section 17.7.C submitted by Mr. Whalen (and Dr. Greco) for change of a non conforming use - retail to business services - animal health practice at 270 Litchfield Turnpike - per 1.) Written statements by Dr. Greco dated 08/10/16 and received 05/23/16 and 2.) Site Plans with hand written notations received on 08/22/16 and based on a prior survey map dated 05-13-1965, subject to the following conditions, 1.)Department of Transportation approval for new driveway and 2.)Proper buffering of parking area along Wilbur Road. By Mr. Solley, seconded by Mr. Werkhoven. Passed by 5-0 vote.

**Lopez/295 New Milford Turnpike/Special Permit: Section
9.4.1.D/Addition to Restaurant and Installation of Exterior
Stairs:**

Mr. Solley stated this application is adequate for the expansion of this restaurant so that it meets staff and patrons needs, along with accommodating the second floor apartment. Commission members were in agreement.

MOTION: To approve the Special Permit application Section 9.4.1.D submitted by Mr. Lopez for an addition to the existing restaurant and exterior stairs at 295 New Litchfield Turnpike per "Proposed Building Addition Site Plan", by Mr. Brian Neff, dated 03/26/16 with additional handwritten notations, subject to the following conditions 1.) that the applicant submit proof to Land Use Office that the Variance granted by the Zoning Board of Appeals was filed as required on the Town Land Records. By Mr. Solley, seconded by Mr. Werkhoven. Passed by 5-0 vote.

Privilege of the Floor:

Atty. Robert Fisher asked the Commission some questions with regard to section 17.4, nonconforming structures. Atty. Fisher has clients looking to purchase an existing non conforming residence and garage. Atty. Fisher stated his clients had an inspection of this home and the detached garage and it was found that the foundations are in poor condition and crumbling. Therefore, he stated his clients will propose to completely demolish both buildings, including their foundations and to reconstruct them. He asked if Section 17.4 would allow for a complete tear down and reconstruction of this nonconforming home and detached garage. Mr. Solley replied by referencing Atty. Zizka's statements made at the March 7, 2016 ZBA meeting. Atty. Zizka's opinion is that if you have a tear down, it is a self created hardship and you may not be allowed to rebuild.

Mr. Solley inquired about the septic system and well. Atty. Fisher stated there will be a new septic system installed and this has been approved. He also added that the existing well is in good condition. Atty. Fisher stated that an Inland/Wetlands application for this work would be required. He noted that there will be no change in footprint or height of the home when it is rebuilt. Atty. Fisher stated this is a very narrow lot and side setbacks are an issue.

Mrs. Hill also referenced Atty. Zizka's comments made at the March 7, 2016 ZBA meeting. At this meeting, Atty. Zizka said that building code issues were not necessarily valid grounds for a variance, unless it can be proven that an unsafe condition

exists. Mrs. Hill suggested that Atty. Fisher submit a report from a building inspector to support the claim that the foundation is, in fact, in poor condition. Mrs. Hill also pointed out that the Assessor's office now has assessor cards that show the dimensions of the building.

Mr. Solley asked Atty. Fisher provide photographs, the building inspection report, and as much information as possible. It was the Commission's consensus to have Atty. Fisher submit this information to the Land Use office as soon as possible. It was the consensus of the Commissioners that a legal opinion should be requested. After reviewing this information and consulting with Atty. Zizka, the Commission would get back to Atty. Fisher with an answer to his question about what is permitted under Section 17.4.

Mr. Werkhoven made a suggestion that Mr. Michael Ajello be invited to future meetings as he would be helpful in addressing questions that come up, as well as informing the Commissioners about ongoing projects around Lake Waramaug. It was agreed to invite Mr. Ajello to the next Zoning meeting.

With regards to letters and/or emails from the Lake Waramaug Association, Commission members were in agreement that all correspondence should be signed or least the Commission should know who is responsible for the emails sent.

Revisions of the Zoning Regulations:

With regards to the Woodville Business District, Mr. Solley requested that members review the 2000 minutes of the public hearing held to consider decreasing the size of this district. These include the reasons, both pro and con, for changing the District boundaries. A map of the current vs previous district boundaries was circulated as well as the written descriptions of the District before and after 2000. Mr. Solley stated that they can review how the district once was and decide if changes should again be made to the District. If it is the consensus to restore all or part of the District, Mr. Solley thought the Commission might be able to conduct a public hearing and act at the November meeting.

Enforcement Report:

Michael Ajello, Zoning Enforcement Officer, submitted Enforcement Report dated August 22, 2016.

MOTION: To adjourn the meeting at 10:30 p.m. By Mr. Solley,
seconded by Mr. Werkhoven. Passed 5-0 vote.

Filed subject to approval.

By: _____
Donna Pennell, Land Use Secretary
August 29, 2016